

FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMENS CLUB
THURSDAY, OCTOBER 20, 2016

Call to Order/Roll Call:

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

Commissioners Present: Bruce Ackerman
 Norma Fragoso
 Esther Gonzalez-Parber
 Philip Green
 Laura Kehrlein (Chair)
 Mimi Newton
 Cindy Swift

Staff Present: Jim Moore, Planning Director
 Garrett Toy, Town Manager
 Town Attorney Katie Wisinski
 Linda Neal, Principal Planner
 Michelle Levinson, Planning Technician

APPROVAL OF AGENDA

M/s, Green/Fragoso, motion to approve the agenda with the following change: agenda item #2 would be heard before agenda item #1.

PUBLIC COMMENTS ON NON-AGENDA ITEMS

Mr. Bob Parfitt, owner of S&N Automotive, referred to Ordinance No. 759 and asked the Commission to clarify the definition of a “school”. He would like to open a marijuana cooperative in the near future but the map contained in the ordinance needs to be corrected (it labels a Montessori pre-school as a “school”). Town Manager Toy stated this would be clarified during the Planning Director’s Report. Staff could place this issue on the next agenda.

REPORTS

1. Review of General Plan’s Open Space & Conservation Element

Commissioner Newton presented a PowerPoint presentation that included the following: 1) State Requirements for Open Space Elements; 2) Preparation and Adoption of an Open Space Ordinance; 3) Fairfax Municipal Code Sections; 4) Fairfax General Plan- Open Space Element; 5) The Four Goals of the Open Space Element; 6) Fairfax Planning Area; 7) Development Applications for Parcels on the Open Space Inventory; 8) Role of the Fairfax Open Space Committee; 9) Conservation Element; 10) State Requirements for Conservation Elements; 11) Conservation Goals.

The Commission thanked Commissioner Newton for her presentation.

2. Report on the July 26, 2016 Fairfax Open Space Committee meeting

Planning Director Moore presented a staff report. He pointed out a couple of typographical errors in the staff report.

Commissioner Green asked if Mr. Schwartz had legal counsel during this process. Planning Director Moore stated “yes”.

Mr. Jack Judkins, member of the Open Space Committee, made the following comments:

- The trail in question is above Canon Village- west of the water tank above Oak Manor Drive.
- He is of the opinion that it has been dedicated by implication because of the public use that has occurred over decades.
- The Open Space Committee was concerned about the trail remaining as a public access way.
- Mr. Schwartz attended several meetings with staff and the Open Space Committee and has agreed to enter into an agreement that would allow for public access for five years along the portion of that trail that passes through his property.

Commissioner Fragoso asked why there was a five-year limit. Mr. Judkins stated Mr. Schwartz was unwilling to do anything beyond that and he thought that would give the parties involved time to come up with a more permanent resolution.

Commissioner Newton asked Mr. Judkins if he thought this property was covered by the development agreement and settlement/court order. Mr. Judkins stated he was told by the Town Attorney that it was not. Planning Director Moore stated this 50-acre parcel was the result of a settlement agreement.

Mr. Frank Egger, Meadow Way, made the following comments:

- There is no institutional memory in Town Hall with respect to this property.
- It was zoned for between 8 and 20 units.
- A developer applied for 20 units and was rejected by the Town.
- A judge ruled that the Town had to approve 20 units.
- One condition of the court order was that the 50-acre parcel would never be developed.
- There are still two lots sitting up there that have not been developed- they are sitting in the middle of a landslide.
- He referred to the easement and stated people have always had a right to traverse that property.

Commissioner Fragoso asked why there was no public record of the easement. Commissioner Newton stated there were easements that are created through continual use by the public of a trail. It does not require a recording to be valid. Commissioner Fragoso asked if they would be valid after a court order. Commissioner Newton stated it would depend on what the court order said.

Commissioner Green stated this was a complex matter that are sometimes settled by quiet title court actions. The owner has agreed to some public use without disturbance for five years while discussions continue with the Open Space Committee. The recommendation from staff was that the agreement regarding the trail property be reflected in the record- but they do not have the agreement yet. Planning Director Moore stated staff would add it to the file when it comes in.

Commissioner Newton was concerned that the Open Space Committee was not made aware of the application sooner and the Commission did not have a complete understanding of the court decision or historic actions that were taken on the property.

DISCUSSION ITEMS

3. Items for discussion sent to the Commission by the Fairfax Town Council on the proposed Highway Commercial (CH) to Central Commercial (CC) Zone Change Ordinance

Town Manager Toy presented the staff report. He stated the City Council wanted clarification from the Commission on certain items.

Commissioner Swift asked if tonight's discussion was limited to the items and questions brought up by the Town Council. Town Manager Toy stated "yes- these were the key issues that needed clarification".

Town Manager Toy referred to Animal Sales and Services Uses and asked for Commission discussion regarding the boarding and grooming of animals at a veterinary clinic or hospital even though the animal is not receiving medical care. Commissioner Swift referred to (b) "wholly indoors" and asked if this conflicted with the possible need to take the animal outside for exercise, a potty break, etc. Town Attorney Wisinski stated the original intent was that all services must be performed indoors but the Commission could allow for a limited outdoor use. Commissioner Swift stated she would like to see that limited use incorporated. Commissioner Fragoso stated she thought the discussion was about whether boarding and grooming was an accessory use to the hospital or medical facility. Commissioner Green stated he agreed with Commissioner Swift's suggestion and thought it should include a provision requiring dogs to be on-leash when walked outside. Commissioner Newton stated they should talk about allowing some outdoor exercise on the parcel at the joint meeting with the Town Council. Commissioner Gonzales-Parber stated perhaps the distinction would be prohibiting a "built environment" on the premises. Commissioner Fragoso stated the issue was whether or not to allow boarding and grooming "vacation" dogs as well as dogs that are hospitalized. Commissioner Green stated he did not think that was a problem. The issue brought up by Commission Swift should be a topic to discuss with the Town Council. Allowing one outdoor activity exception might open the door to others that would logically have to be allowed. They need to be specific and include wording such as "walking dogs on-leash would be allowed", etc. Town Manager Toy stated there was consensus on allowing the boarding and grooming of animals that are not getting medical services. Staff would come up with some language regarding the outdoor exercise issue for the joint meeting with the Town Council.

Town Manager Toy stated the Town Council asked for clarification on the following issues: 1) Eating and drinking establishments- Would bars that do not serve food be allowed, either conditionally or as a principally permitted use?; 2) Public parking garages and lots- Would garages or lots owned by the Town be a permitted use?; 3) Service stations- Is there a way to allow this type of use and not consider it a legal non-conforming use?; 4) Density bonus ordinance- How could be applied in the new zone?; 5) Residential units on small lots- How would the density cap of 4.5 units per acre be applied to small lots?; 6) Warehouse uses- Should warehouses be allowed in this zone?; 7) Medical laboratories- Would they be considered an accessory use of medical office uses?

Chair Kehrlein opened the meeting up to public comments.

A resident made the following comments:

- He did not understand the "legalise" regarding the question about eating and drinking establishments.
- A bar that does not serve food should not be required to get a Use Permit.

Ms. Diane Hoffman, Porteous Avenue, made the following comments:

- At the last Commission meeting there was overwhelming testimony in opposition to the proposed rezoning.

- The ordinance is full of new and disturbing information.
- She is shocked that certain existing businesses would no longer be conforming businesses.
- The rezoning is faulty.
- She is concerned about the money that was paid to consultants.
- The present zoning works- they do not need to change it.

Mr. Frank Egger, Meadow Way, made the following comments:

- Fairfax is an unpretentious community with a small-town character.
- The majority of residents do not accept the current proposal.
- The proposal will open the Town to high-density residential development, four story buildings, along the major corridors.
- Current uses should not be outlawed.
- He urged the Commission to reject the proposal.

Ms. Diana Purdue, Scenic Road, made the following comments:

- Public comment is essential.
- Public outreach has been a failure.
- The residents should be able to vote on this proposal.

Ms. Stephanie Burns, Mountain View, made the following comments:

- The proposal sounds completely contrived.
- The General Plan talks about preserving quaint downtown Fairfax but the proposal would open the door to density bonuses and not having to go through the Conditional Use Permit process.
- Sir Francis Drake is a “highway” and a barrier to the quaint downtown.
- She loves the Town the way it is.

Ms. Denise Larson, Scenic Road, made the following comments:

- Fairfax does not meet the requirements for successful transit-oriented development.
- It is a tool for urban areas.
- She opposes the proposal for rezoning.

Ms. Jessica Green, Fairfax, made the following comments:

- People did not know this was going on.
- She tried to let people know what is going on.
- There is a problem with communication.

Ms. Suzanne Cheney, Ace Court, made the following comments:

- The Council, Commission, and staff did not do any basic research.
- Bolinas Road is a federally mandated evacuation route- it cannot be turned into a mall.
- She is concerned about all the development.
- This proposal should be on a ballot.
- She was concerned about the money spent on consultants.
- Fairfax Veterinary clinic does not board animals.

Mr. Mark Hammerman, Shadow Creek, made the following comments:

- He agreed with the comments that have been made.
- The rezoning document should have an executive summary.
- Residents have a right to know: 1) Why this was drafted?; 2) Who drafted it?; 3) What do the authors believe it will accomplish?; 4) Why does the proposal need to be considered at this time?; 5) What benefits does the proposal bring to Fairfax?; 6) What risks would be presented and avoided?

Mr. Daniel Costa, owner of Marin Automotive, made the following comments:

- New technology for cars is coming- along with mechanics that can work on those cars.
- The rezoning would make his business legal non-conforming. He would not want to be forced to close his doors.

Ms. Mallory Geidheim made the following comment:

- This decision should not be based on tax revenue but rather the heart of Fairfax.

Chair Kehrlein asked the Commission asked for comments regarding issue #1 pertaining to bars.

Commissioner Fragoso provided the following comments:

- She asked if bars that serve food would require a Use Permit. Town Manager Toy stated they were allowed.
- She asked if existing bars and auto repair shops that already had Use Permits would become “outlawed”. Town Attorney Wisinski asked the Commission to make the distinction between allowing “eating and drinking establishments” or “eating and/or drinking establishments”. Town Manager Toy noted the issue of “legal non-conforming” is a broader issue.

Chair Kehrlein provided the following comments:

- The prior conversation was whether the bar was the major focus of the business or accessory to the business.
- This topic probably needs more discussion with the Council.

Commissioner Green provided the following comment:

- The intent was for the language to be “and/or”.

Commissioner Newton provided the following comment:

- A bar that does not serve food should not be required to get a Use Permit.

Commissioner Ackerman provided the following comment:

- They eventually need to discuss how to deal with an existing business that becomes legal non-conforming after adoption of the ordinance.

Commissioner Fragoso provided the following comment:

- A new, full alcohol bar should require a Use Permit. This would take care of the legal non-conforming issue.

Town Attorney Wisinski asked for clarity regarding whether they want to include a category for bars that do not serve food at all (“and/or”). They can talk about how to treat that use at a later date. It was the consensus of the Commission to add this category.

Chair Kehrlein asked the Commission asked for comments regarding issue #2 pertaining to public garages and lots.

Chair Kehrlein provided the following comment:

- She supported prohibiting privately owned or operated public parking lots or garages. The other Commissioners agreed.

Chair Kehrlein asked the Commission asked for comments regarding issue #3 pertaining to service stations.

Town Manager Toy discussed the issue regarding “legal non-conforming” uses. The Council asked the Commission to talk about allowing them for existing businesses but not allowing this use for new businesses or requiring them to get a Use Permit. One option is to keep things the same and the other option is to create an overlay zone. An overlay zone places additional regulations on existing zones within areas of special concern.

Commissioner Fragoso provided the following comments:

- She likes the idea of an overlay zone. It is a clean way to deal with the problem.
- She likes the protection of existing businesses.
- There is a 12-month wait period for non-conforming uses after discontinued use.
- It might be possible to extend this period.
- There should be conditions and standards. The community is begging for controls.

Commissioner Green provided the following comments:

- He likes the idea of an overlay zone.
- He asked staff if it could encompass only the properties being used for these uses. In other words, a new gas station could only replace an existing station with no increase in the footprint. Assistant Attorney Wisinski stated it could be applied to a particular site. She would encourage the Commission to think about the particular land uses and impacts to the Town rather than focusing energy on existing and incoming businesses. They should think about the tools that could mitigate those impacts such as Use Permits, standards, etc.
- Gas powered and electric cars need to be serviced.
- He suggested a 20-year overlay zone.

Commissioner Ackerman provided the following comment:

- Existing businesses as they currently exist should be ok.

Commissioner Gonzalez-Parber provided the following comments:

- The overlay zoning is a good thing.
- The intent is to protect the existing businesses.
- She does not want to see a bunch of new gas stations sprouting up.

Town Attorney Wisinski stated it sounded like the Commission felt there was some value to these particular uses but they want some mechanism for imposing development standards or conditions on a case-by-case basis to mitigate those impacts. They would not be permitted “by right”. The Commission agreed. Commissioner Green stated these conditions should not be imposed on current businesses.

Commissioner Swift provided the following comments:

- She did not want existing service stations, repair shops, or car washes to be considered legal non-conforming.
- Could these existing businesses make changes or expand? Town Attorney Wisinski stated if they want to allow this then current or prospective businesses would need to be treated in a similar fashion. They are tasked with looking at the impact of this type of business and not each individual one.
- Could the Town limit the number of businesses of a specific type? Town Attorney Wisinski stated to impose a numeric limit would require coming up with a reasonable basis for the number selected. This could be a challenge and most communities avoid this approach due to potential litigation.

Commissioner Newton provided the following comments:

- There seemed to be an inclination to want to create a site-specific zoning for particular businesses.
- Staff is encouraging a more holistic approach to zoning that takes into account a set of standards and criteria that would apply evenly across the zone.
- She is not sure she understands the overlay approach.
- There is sentiment in the community against making existing businesses legal non-conforming.

Chair Kehrlein asked the Commission asked for comments regarding issue #4 pertaining to density bonuses.

Town Manager Toy stated this would be discussed during the joint meeting with the Council. They would discuss state mandates for affordable housing, how density bonuses work, how a local ordinance could be crafted to allow for more flexibility, etc.

Commissioner Newton provided the following comment:

- It would be helpful in reviewing developments to have in mind some priorities of concessions that could be offered.

Chair Kehrlein asked the Commission for comments regarding issue #5 pertaining to residential units on small lots (density cap).

Commissioner Swift provided the following comments:

- She asked for the definition of “residential units”- does it include a bathroom, a kitchen, etc. Town Attorney Wisinski stated page 15 of the ordinance defines each type of residential use.
- Does “residential use” equal “residential unit”. Town Attorney Wisinski stated “no”- “residential uses” is the overarching category of all the subcategories.

Commissioner Newton provided the following comments:

- The discussion should be- What does 4.5 units/acre mean when dealing with a lot smaller than an acre?
- For instance, 2.25 units could be developed on a half-acre, etc. Planning Director Moore stated staff has been working on the math and will come back with an analysis.

Commissioner Gonzalez-Parber provided the following comments:

- She supported a minimum of one unit and up to 4.5 units depending on the size of the lot.
- She asked what was currently allowed. Planning Director Moore stated there currently is no minimum or maximum density in the CH or CC.

Commissioner Green provided the following comment:

- He suggested they add a simple math chart to the ordinance

Chair Kehrlein asked the Commission asked for comments regarding issue #6, warehouse uses.

Chair Kehrlein provided the following comment:

- She thought the Commission’s intent was to allow warehouses in the rear and associated with the retail use in the front.

Commissioner Gonzales-Parber provided the following comments:

- The Commission did not want stand-alone warehouses.
- They would be allowed as an accessory component in the back.

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.

Mr. Lew Tremaine made the following comments:

- There is not a restaurant in Town that does not have take-out.
- Food will be served in disposable containers.
- They will not have a take-out menu and there will be no promotion of take-out service.
- Food has to be ordered at the bar.
- The bulk of the business will be when music is being played in the bar.

Commissioner Green asked if they plan to have bicycle delivery. Mr. Tremaine stated “yes”, but the details have not been worked out. Commissioner Green stated this is a promotion of take-out. Mr. Tremaine stated there is a difference between take-out and delivery. Commissioner Ackerman agreed- deliveries would not take up any parking. Commissioner Green stated the issue is an increase in the amount of business.

Commissioner Fragoso stated she did not have a problem with the bicycle deliveries but did not want to see customers coming up to the trailer for food. Mr. Tremaine stated that was not being contemplated at this time. However, the window is on the building side and this type of service would not disrupt traffic flow.

Commissioner Fragoso asked the applicant if they were willing to live with the three-year period of operation prior to review. Mr. Tremaine stated “yes”.

Commissioner Swift noted there was a cost estimate for an indoor kitchen but not for a kitchen along side the building. Mr. Tremaine stated that would not be workable and would probably be cost prohibitive.

Chair Kehrlein asked for clarification on the hours of operation. Mr. DeFrance stated they would be closed on Tuesdays, open noon to 10:00 p.m. on Wednesdays, Thursdays, and Sundays, and open noon to midnight on Fridays and Saturdays. Chair Kehrlein asked when music was played at the bar. Mr. Tremaine stated they have music on the deck on Sunday afternoons and then music in the evenings from 9:00 p.m. until 2:00 a.m.

Commissioner Gonzalez-Parber asked if the trailer would be painted one color with no logos or advertisements. Mr. Tremaine stated they have not given it much thought- they will do whatever the Commission wants. There will not be any logos. It cannot be seen from the street. Principal Planner Neal displayed the color palette.

Commissioner Newton stated she would love to see a “wild and crazy” color scheme for the trailer. Commission Fragoso agreed and stated they could have a mural competition for local artists

Chair Kehrlein closed the Public Hearing.

Commissioner Gonzales-Parber provided the following comment:

- She could approve the resolution as is.

Commissioner Swift provided the following comments:

- She has concerns that the original scope of the business is expanding.
- The hours have almost doubled.
- It looks less of an accessory service to the bar and more of a separate restaurant.
- The applicant is not moving towards a kitchen and seems to see this as a permanent use.
- She referred to the parking and asked the applicants if 25 spaces were acceptable. They stated “yes”.

Chair Kehrlein provided the following comments:

- She shared Commissioner Swift's concerns.
- A trailer or food/truck seems to be more of a temporary use.
- She has reservations about having the trailer parked in the lot permanently but could consider supporting it if it were only brought to the site for use certain days of the week such as weekends.
- She was not sure she wanted to set this type of precedent.

Commissioner Ackerman provided the following comments:

- He is in favor of the resolution.
- They got off to a rocky start but finally submitted a clean application- this makes a difference.
- A five-year period would be fine with him.
- He agrees that the Town should not be filled with semi-permanent food trucks.
- He would like to see a permanent kitchen.

Commissioner Newton provided the following comments:

- She agreed with Commissioner Ackerman- they need to move towards a permanent kitchen.
- There are concerns from other businesses about the trailer and the need for a "level playing field".

Commissioner Green provided the following comments:

- He referred to page 5 of the resolution, "Conditions", and asked for the addition of #19: "CMSA testing results shall be reported to staff".
- He referred to page 2 of the resolution and had some minor corrections.

Commissioner Fragoso provided the following comments:

- Staff needs to get an updated commissary agreement with Casa Manana.

Principal Planner Neal stated the approval would be based on the fact that the trailer is being operated by Casa Manana and she asked if the Use Permit should be based on this business alone. Commissioner Green stated "no" but there must be an offsite food preparation business (commissary).

M/s, Green/Fragoso, Motion to adopt Resolution No. 16-27 as revised and redlined by staff and approve application #16,29, 17-19 Broadway.

AYES: Ackerman, Fragoso, Gonzalez-Parber, Newton

NOES: Green, Swift, Chair Kehrlein

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

6. 96 San Gabriel Drive; Application #16-37

Request for a Use Permit and Side-yard Setback Variance to construct a 356-square-foot, second story, bedroom/closet addition over the garage of a 1,505-square-foot, 3-bedroom, 2-bathroom, residence; Assessor's Parcel No. 001-261-35; Residential Single-family RS 7.5 Zone; Rod and Millie Milstead, applicants/owners; CEQA categorically exempt 15301(e)(1).

Chair Kehrlein stated this item has been continued to the November meeting.

7. 68 Cypress Drive; Application #16-38

Request for a Design Review Permit for a 50% remodel/expansion of a single-family residence. The project would involve demolishing 608-square-feet of the existing 1,858-square-foot structure and adding 1,127 square feet resulting in a 2,377-square-foot, 3-bedroom, 2-bathroom residence; Assessor's Parcel No. 003-201-25; Residential Single-family RS-6 Zone; Herbert Van Den Bergh and Andrea Speraw, owners; Morgan Hall, Architect; CEQA categorically exempt 15301(e)(2)

Chair Kehrlein stated this item has been continued to the November meeting.

MINUTES

8. Minutes from September 15, 2016 Planning Commission regular meeting.

Chair Kehrlein stated approval of the minutes would be continued to the next meeting.

PLANNING DIRECTOR'S REPORT

Planning Director Moore reported at the November 2nd Town Council meeting there would be a Bicycle and Pedestrian Plan update by Alta Transportation and the Transportation Agency of Marin (TAM). The Council would also be reviewing the traffic study methodology for the Wall property and discussing the recent Town Center Plan workshop.

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Green thanked the Ross Valley Fire Department for conquering the recent fire at Camp Tamarancho.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:52 a.m. Respectfully submitted,

Toni DeFrancis,
Recording Secretary