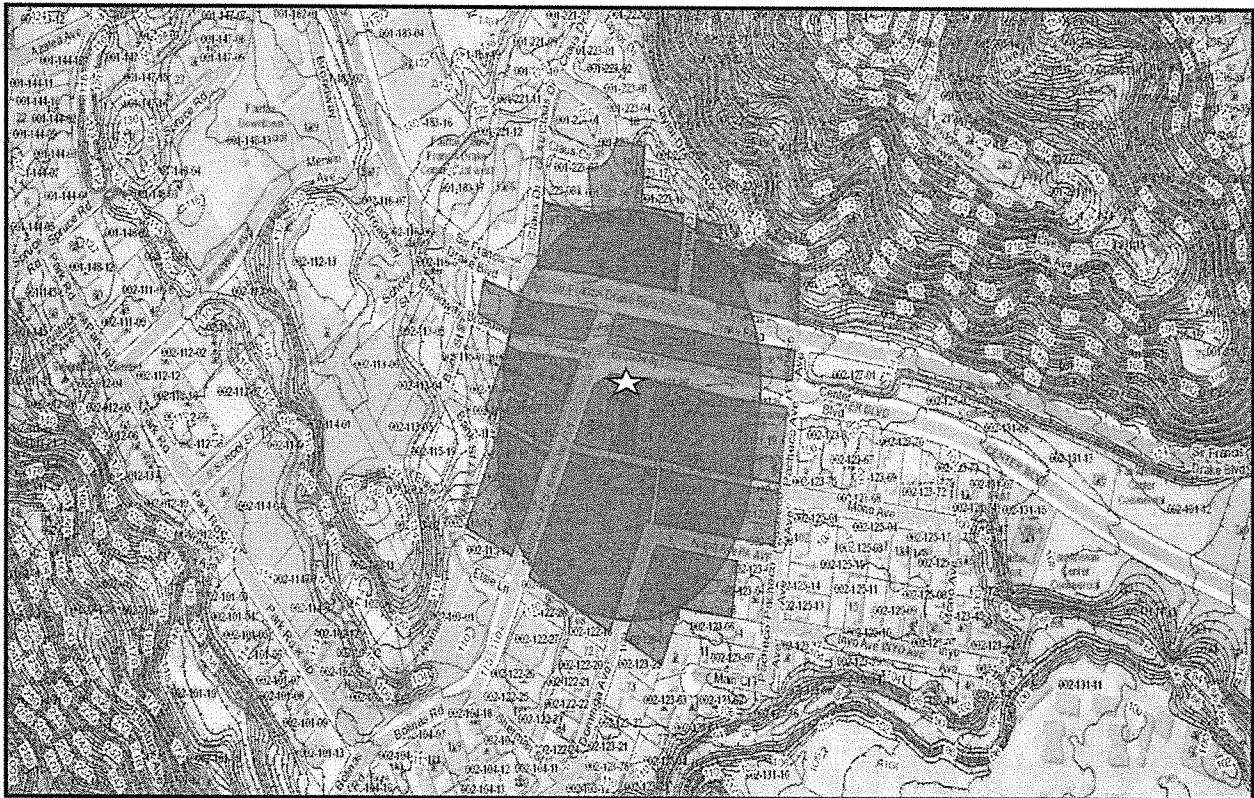


STAFF REPORT
Department of Planning and Building Services

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



29 BROADWAY

BACKGROUND

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

On December 12, 1983, the Town Council approved a Conditional Use Permit to allow live entertainment inside the bar subject to the business complying with the following conditions:

1. The music must end by 1:00 AM;
2. The Town's Noise Ordinance, Town Code Chapter 8.20, must be complied with; and
3. These conditions and any other appropriate conditions shall be reviewed when the Conditional Use Permit and all other use permits for live entertainment in the downtown area are brought up for review.

In 1998, both the Design Review Board and the Planning Commission granted discretionary permits to allow a 703-square-foot, covered patio addition to the side of the bar building.

At the regular Planning Commission meeting on June 16, 2016, the Commission approved a modification of the original live entertainment Conditional Use Permit to allow outdoor, acoustic, music with vocal amplification in the covered patio area and occasional private events in the rear yard of 29 Broadway, location of Peri's Bar (Exhibit A – Resolution No. 16-16). At that time, the Commission indicated they would review the Conditional Use Permit after six (6) months.

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

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

- Only non-amplified music is allowed in the backyard area with the exception that a single singer can be amplified. Amplified Disc Jockey music is not approved.
- The music and entertainment is approved in the backyard from 4:00 PM to 8:00 PM only. Music or entertainment prior to 4:00 PM and after 8:00 PM is a

violation of the Use Permit and can result in the Use Permit being reviewed for modification or revocation.

- Only two (2) to three (3) entertainers or musicians are approved to play in the back yard at any one given time.

DISCUSSION

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

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

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

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

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

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

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

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

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

RECOMMENDATION

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

ATTACHMENTS

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

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

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

Attachment D1- Letter objecting to outdoor live entertainment

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

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

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

RESOLUTION NO. 16-31

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

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

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

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

WHEREAS, the Commission has made the following findings:

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

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

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

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

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

1 singer whose voice can be amplified.

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

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

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

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

AYES:

NOES:

Chair, Laura Kehrlein

Attest:

Jim Moore, Director of Planning and Building Services

| Inc # | Type | Date | Location | Reading | NOTES |
|------------|-------|------------|-------------|---------|------------------------------------------------------------------|
| 1602110082 | NOISE | 02/11/2016 | 29 BROADWAY | N | Bar turned it down |
| 1602270033 | NOISE | 02/27/2016 | 29 BROADWAY | N | Req to close doors |
| 1603090070 | NOISE | 03/09/2016 | 29 BROADWAY | N | Request to shut door |
| 1603200035 | NOISE | 03/20/2016 | 29 BROADWAY | N | outside patio band |
| 1603200037 | NOISE | 03/20/2016 | 29 BROADWAY | N | Bar turned it down |
| 1603200039 | NOISE | 03/20/2016 | 29 BROADWAY | N | QOA |
| 1603250001 | NOISE | 03/25/2016 | 29 BROADWAY | N | Req to shut doors |
| 1603260045 | NOISE | 03/26/2016 | 29 BROADWAY | N | Req to shut doors |
| 1603290069 | NOISE | 03/29/2016 | 29 BROADWAY | N | Req to shut doors |
| 1604060056 | NOISE | 04/06/2016 | 29 BROADWAY | N | Req to shut doors |
| 1604080056 | NOISE | 04/08/2016 | 29 BROADWAY | N | Req to shut doors |
| 1604130065 | NOISE | 04/13/2016 | 29 BROADWAY | N | Req to shut doors |
| 1604230046 | NOISE | 04/23/2016 | 29 BROADWAY | N | Req to shut doors |
| 1604280056 | NOISE | 04/28/2016 | 29 BROADWAY | N | Req to shut doors |
| 1605010053 | NOISE | 05/01/2016 | 29 BROADWAY | N | Req to shut doors |
| 1605030076 | NOISE | 05/03/2016 | 29 BROADWAY | N | Req to shut doors |
| 1605050063 | NOISE | 05/05/2016 | 29 BROADWAY | N | Req to shut doors |
| 1605070051 | NOISE | 05/07/2016 | 29 BROADWAY | N | Req to shut doors |
| 1605130067 | NOISE | 05/13/2016 | 29 BROADWAY | N | Req to shut doors |
| 1606050048 | NOISE | 06/05/2016 | 29 BROADWAY | N | Req to shut doors |
| 1606070056 | NOISE | 06/07/2016 | 29 BROADWAY | N | Req to shut doors |
| 1606070058 | NOISE | 06/07/2016 | 29 BROADWAY | N | Req to shut doors |
| 1606220001 | NOISE | 06/22/2016 | 29 BROADWAY | N | Req to shut doors COND USE PERMIT AFTER THIS DATE |
| 1606230067 | NOISE | 06/23/2016 | 29 BROADWAY | Y | DB reading 38-39 no violation |
| 1606250055 | NOISE | 06/25/2016 | 29 BROADWAY | N | QOA |
| 1606250070 | NOISE | 06/25/2016 | 29 BROADWAY | N | Req to shut doors |
| 1607010059 | NOISE | 07/01/2016 | 29 BROADWAY | N | Outside amplification past 8pm but on rear patio |
| 1607020043 | NOISE | 07/02/2016 | 29 BROADWAY | N | Outside amplification past 8pm but on rear patio |
| 1607040041 | NOISE | 07/04/2016 | 29 BROADWAY | N | Quiet on arrival |
| 1607130001 | NOISE | 07/13/2016 | 29 BROADWAY | N | Req to shut doors |
| 1607130001 | NOISE | 07/13/2016 | 29 BROADWAY | N | Req to close doors |
| 1607220032 | NOISE | 07/22/2016 | 29 BROADWAY | N | r/p wanted pre-emptive response. Band setting up b/patio |
| 1607220035 | NOISE | 07/22/2016 | 29 BROADWAY | N | amplified music from front/rear patios. Off says no vio observed |
| 1607220040 | NOISE | 07/22/2016 | 29 BROADWAY | N | comp music after 2000 but it was on rear patio |
| 1607230046 | NOISE | 07/23/2016 | 29 BROADWAY | N | loud music comp. it was DJ REAR PATIO |
| 1607230051 | NOISE | 07/23/2016 | 29 BROADWAY | N | Request to shut door |

ATTACHMENT B

ATTACHMENT

| | | | | | |
|------------|-------|------------|-------------|------|-------------------------------------------------------------------------------------------------------------------|
| 1607230036 | NOISE | 07/23/2016 | 29 BROADWAY | N | R/P says band set up patio. It was DJ and music back/patio |
| 1607060037 | NOISE | 08/06/2016 | 29 BROADWAY | N | Reg to check on permit vio. Patio appeared set up for live amplified music |
| 1608070030 | NOISE | 08/07/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1608070036 | NOISE | 08/07/2016 | 29 BROADWAY | N | Complaint of loud music, r/p said it would be a vio declined reading |
| 1608070038 | NOISE | 08/07/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1608090044 | NOISE | 08/09/2016 | 29 BROADWAY | N | Request to shut door |
| 1608110053 | NOISE | 08/11/2016 | 29 BROADWAY | N | Request to shut door |
| 1608120042 | NOISE | 08/12/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1608120052 | NOISE | 08/12/2016 | 29 BROADWAY | N | Request to shut doors |
| 1608130050 | NOISE | 08/13/2016 | 29 BROADWAY | N | comp of amp music. Quiet on Arrival |
| 1608180065 | NOISE | 08/18/2016 | 29 BROADWAY | N | Request to shut doors |
| 1608200043 | NOISE | 08/20/2016 | 29 BROADWAY | N | comp that amp equipm is set up. Nothing occurring now |
| 1608240081 | NOISE | 08/24/2016 | 29 BROADWAY | N | Reg to close door |
| 1608250072 | NOISE | 08/25/2016 | 29 BROADWAY | SI R | Reg to close door - Took unofficial read. 40 db amb was 36db |
| 1608260069 | NOISE | 08/26/2016 | 29 BROADWAY | SI R | Reg to close door - Took unofficial read. 40 db amb was 36db |
| 1608260052 | NOISE | 08/26/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1608300063 | NOISE | 08/30/2016 | 29 BROADWAY | N | No music being played. |
| 1608310001 | NOISE | 08/31/2016 | 29 BROADWAY | N | Reg to close door |
| 1609020043 | NOISE | 09/02/2016 | 29 BROADWAY | N | Reg to chk permit vio. No band/nothing on front patio |
| 1609030004 | NOISE | 09/03/2016 | 29 BROADWAY | N | Request to shut doors |
| 1609040033 | NOISE | 09/04/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1609090031 | NOISE | 09/09/2016 | 29 BROADWAY | N | Reg to check permit vio. No instruments were connected to amp |
| 1609100052 | NOISE | 09/10/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1609110033 | NOISE | 09/11/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1609140076 | NOISE | 09/14/2016 | 29 BROADWAY | N | Request to shut doors |
| 1609160069 | NOISE | 09/16/2016 | 29 BROADWAY | N | Reg to close door. Took unofficial reading 38db. |
| 1609160046 | NOISE | 09/16/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1609160051 | NOISE | 09/16/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| | | | | | caller also stated they were playing past 8pm. Call came in at 8:03pm. Officer on scene at 8:08 no music playing. |
| 1609180037 | NOISE | 09/18/2016 | 29 Broadway | N | Reg to check permit vio Officer confirmed amp instruments |
| 1609180049 | NOISE | 09/18/0049 | 29 BROADWAY | N | Reg to close door. Took unofficial read. Music 44db ambient 43 |
| 1609230047 | NOISE | 09/23/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1609300036 | NOISE | 09/23/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |
| 1610010042 | NOISE | 10/01/2016 | 29 BROADWAY | N | comp of amp music on patio, it was inside. DB at r/p was 54 (1825hrs) |
| 1610020027 | NOISE | 10/02/2016 | 29 BROADWAY | N | Reg to check permit vio Officer confirmed amp instruments |

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

| | |
|----------------------------------|----|
| # OF INCIDENTS | 23 |
| Prior to conditional use permit. | |
| 44 incidents afterwards | |

APPLICANT'S SUPPLEMENTAL INFORMATION

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

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

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

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

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

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

ATTACHMENT

C1

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

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

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

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

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

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

Or

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

| Name | Address | Business/Occupation | Signature |
|-----------------|------------------------|---------------------------|-------------|
| John Sandfort | 1380 Sir Francis Drake | Construction | [Signature] |
| AKROD SWOL | 433 OSEMA DR. | MUSICIAN | [Signature] |
| Justin Cook | 1007 Green Oak Dr | Farmer | [Signature] |
| Cliff Schaeffer | Novato, CA. 94949 | Barber/Cleaner | [Signature] |
| BRAAUNO | 3209 Mate Resto | BAD WORKER | [Signature] |
| Jan Perck | 3209 Mate Resto way | Homeless | [Signature] |
| Alma Marie P | Wherever I want. | EARTH and other frontiers | [Signature] |
| Ed Beols | EARTH | Clown | [Signature] |
| [Signature] | EARTH | Saver | [Signature] |
| [Signature] | R.O 469 waco | Red neck | [Signature] |
| Michael Weiss | 43 Park Ave | CRIST. | [Signature] |
| Josie Beste | 55 Park rd | Host, marinitas | [Signature] |
| Sarah J. Smith | 171 Canyon Rd | Barista | [Signature] |
| Whitney Heuer | 60 Pastori Ave | Sales, MK | [Signature] |
| David Nickerson | 60 Pastori | Real Estate | [Signature] |
| Ed Cass | 52 Dan Rd | TECH | [Signature] |

[Large handwritten signature]

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| Name | Address | Business/Occupation | Signature |
|--------------------------|---------------------------|--------------------------------|-------------|
| Sam Bernard | 3400 1st St Fairfax | Fairfax Sloop | [Signature] |
| Ryan Tompkins | | | |
| Anna Lindgren | 119 Willow Ave | Executive Assistant | [Signature] |
| Arim Daneshpajouh | 119 Willow Ave | VP | [Signature] |
| Eugene LaChance | 20528 SFD | Mechanics | [Signature] |
| Kathy Cone | 6 Charro Way | Retired | [Signature] |
| Billy FRANKS | 90 Florence Ave | MUSICIAN | [Signature] |
| Polly Knox | 60 Pastor | Fairfax/Variety | [Signature] |
| Pave Foley | 2 MORT AVE FAIRFAX | CONSTRUCTION | [Signature] |
| Keri Kostu | 2700 S TERRACE | case manager / Social Services | [Signature] |
| | 84 Madrone | Att'y | [Signature] |
| Meredith Moran | 84 Madrone | Professor | [Signature] |
| RON LSON | 13 GARDEN WAY WOODACRE | LOCATION SCOUT 3 MANAGER | [Signature] |
| GREY DE ROSE | 10 RALLY CT | RETIRED | [Signature] |
| Rich Cerick | 200 Bolinas Rd, NO. 63 | Maker of fin | [Signature] |
| Kaci Newkirk | 2380 S. FRANKS DRIVE | Bartender | [Signature] |

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Or

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

| Name | Address | Business/Occupation | Signature |
|-----------------|--------------------------------|---------------------|-----------------|
| Michael Hays | 65 Belthard | Musician | Michael Hays |
| Scott C. Morris | 175 Ridge | Acupressor | Scott C. Morris |
| ELDON CONNER | 2 MORRIS AVE | Plumber | ELDON |
| Laura Martin | 90 Oak Knoll Dr | Court Reporter | Laura Martin |
| Deborah Price | 310 Cascade Dr | Accountant | Deborah Price |
| BARRY PRICE | 77 Maple Ave | Contractor | Barry Price |
| Graham T. ... | 95 Live Oak | Architect | Graham T. ... |
| Phillip Mills | 2 Bupperry Way Ave | Barber at the Forge | Phillip Mills |
| Josh D. Zee | 100 Bay Vista Way #42 S.R. Ct. | Carpenter | Josh D. Zee |
| Sarah Patrick | 28 Deuce Ct, Fairfax | Dania | Sarah Patrick |
| John Daniels | 10 Piper Lane | Teacher | John Daniels |
| Amanda Cant | 75 Bosque | Potter | Amanda Cant |
| TOMMY OMAHONY | 75 BOSQUE | MUSICIAN | TOMMY OMAHONY |
| Danay Kilevsky | 161 Butterfield | Producer | Danay Kilevsky |
| Kyle Burkes | 100 Bay Vista | HVAC | Kyle Burkes |
| MARCELO DA ... | 26 Elm Ave | TATTOOIST | MARCELO DA ... |

ME TOO !!!

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

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

Or

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

| Name | Address | Business/Occupation | Signature |
|------------------|------------------------------|------------------------|------------------|
| MILTON CONTRATTI | 17 NAPA AVE FA | DOG GROOMER | MILTON CONTRATTI |
| Steve Power | P.O. Box 1152 ^{FA} | lumber sales | Steve Power |
| MARK HAPKIN | 5 PARK STREET | FATHER/ARTIST | Mark Hapkin |
| Ron SantaCruz | 22 Spruce Rd | NAVES/Bartender | Ron SantaCruz |
| Jerry Sagle | 127 Broadway | Film maker | Jerry Sagle |
| Carolyn M Cloy | 37 Humboldt | Self | Carolyn M Cloy |
| Tom O'Neil | 60 Domingo Ave ^{FA} | school crossing guard | Tom O'Neil |
| Corina Trujillo | 57 Tamara Ave | EV HAUS | Corina Trujillo |
| Leke O'Neal | 280 School Rd | Bartender, door dude | Leke O'Neal |
| PAT MARTINEZ | 90 OAKKNOLL AVE | FIREMAN/PETER | PAT MARTINEZ |
| MARIS RIVERA | 89 TAYLOR DR | ERTY Worker | MARIS RIVERA |
| Ashley Meris | 66 Taylor DR | Occupational Therapist | Ashley Meris |
| Keistin Bakowski | 39 Wreden Ave | Real Estate | Keistin Bakowski |
| Nico Castets | 145 CASCADE DR | cartage for | Nico Castets |
| Cricket Lera | 340 Scenic Rd | Writer | Cricket Lera |
| Joanne Godard | 40 Canyon Rd ^{SA} | bookkeeper | Joanne Godard |

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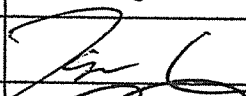



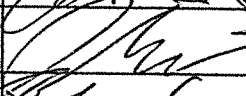
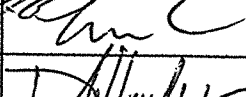
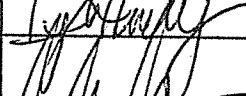
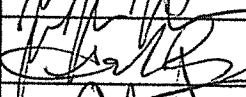

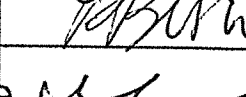

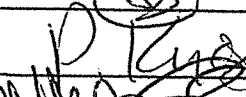




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|-------------------|--------------------------------------|-----------------------------|---------------------------------------------------------------------------------------|
| Taylor Cutcomb | 1340 S.F.D. #1 SAN ANGELO | MUSICIAN |  |
| Michael Brown | 24 Willow FAIRFAX | GOLF PROFESSIONAL |  |
| PATRICK BELL | 64 BOTLIN RD FAIRFAX, CA | NAVY, RET |  |
| W. Jon Binkles | 365 Cascade Dr Fairfax, CA | Teacher |  |
| Clare S. Jodan | 20(A) Hill Ave. Fairfax, CA 94930 | Floor Manager |  |
| John Umphre | 1075 Fairfax Fairfax, CA 94978 | Carpenter Business Owner |  |
| RACHEL CRANNA | 5 BURDETT LN FAIRFAX | ICE CREAM MAKER & SCOOP |  |
| Dylan Hurley | 100 Scenic Rd. Fairfax CA 94930 | Filmmaker/Prod |  |
| J. Vasquez | 50 Mono Ave | Barista Manager |  |
| Josh Brees | 100 Bayo Vista St | tattoo artist |  |
| Chelsea Decker | 31 Broadway Ky | Hairstylist |  |
| Phoebe Bishop | 19 sequoia, Fairfax | Lawyer |  |
| Adam Blum | 252 scenic FAIRFAX 94960 | FAIRFAX 94960 |  |
| Jesse Skybrook | 190 Isle Royale | Bartender |  |
| Polly Knox | 61 Broadway | Retail Owner |  |
| Nicole Belluomini | 4 Willow | PM/Admin/Payroll |  |

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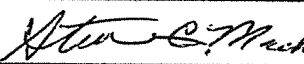



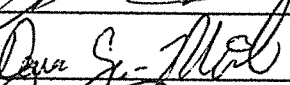
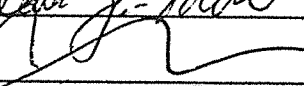

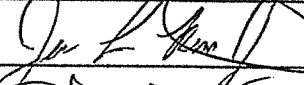
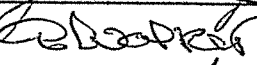
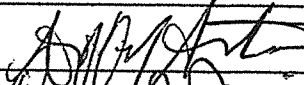
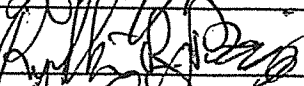
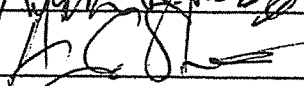
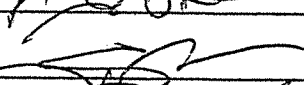

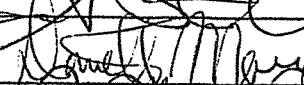
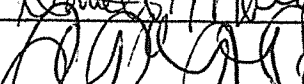
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|-----------------------|------------------------------------|---------------------------------------------|---------------------------------------------------------------------------------------|
| STEVE MACK | 29 ALHAMBRA CIR | OWNER/MARIN METALCRAFT |  |
| CHELSEA GRENADE | 15 ELAINE WAY | BARTENDER |  |
| ROBIN SIEBACH | 48 HICKORY FAIRFAX | BARTENDER |  |
| LOUISE RAE | 59 TAYLOR | ROOFER |  |
| Dariuszka Sang-Maisel | 536 Scenic rd. Fairfax | chef Bel Campo |  |
| LEZ DAVIS | 29 Alhambra Circle | Self employed |  |
| Alisha Ortega | 13403c Freischule | BARISTA |  |
| Jos L. RANOWITZ | 2587 FREITAS WAY FAIRFIELD, CA | TEACHER |  |
| Alison Walker | 161 Butterfield San Anselmo | Gardener |  |
| Aidan Haberstroh | 480 Cascale Drive | Maintenance Manager |  |
| Ruffin Bailey | 50 MONO AVE. (RIGHT BEHIND PERI'S) | PROPERTY MANAGEMENT & LANDSCAPE MAINTENANCE |  |
| Annmarie Starelli | 137 CRENSHAW DR | CLERK |  |
| Sean McNeil | 2500 Deer Valley | Life Coach |  |
| Jarret Standand | 445 Pinewood Dr | Server |  |
| Danielle Moreno | 55B FRUSTUCK AVE | teacher |  |
| Kira Shikazi | 1551 Center road | server |  |

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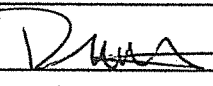

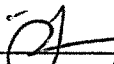



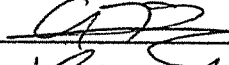
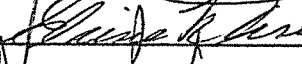


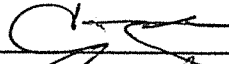

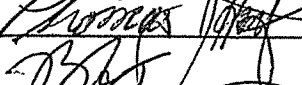
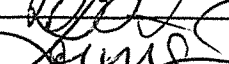
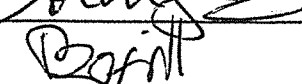

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|-----------------|---------------------------------------|---------------------|---------------------------------------------------------------------------------------|
| Rooney McAlonan | 2382 S.F.D.B | CAINS TIRES |  |
| P.S. Dillards | 45 Igouville La. Blvd. #1 99949 | Self employed |  |
| Dianna Gibson | 164 Cascade | Social work |  |
| Michael Slater | 74 Oakland Ave | Server |  |
| Mandy Thomasson | 19 Seymour rd | Mother |  |
| NATHAN GONZALEZ | 145 FRANKS AVE. | THE FORGE TATTOO |  |
| Tony DeHacua | 61A Gollar Ave | PECO manager |  |
| Elaine Truell | 321 OAK MANOR | Teacher |  |
| IAN SUTTON | 107 Live Oak | HO SOFTWARE |  |
| MARK O'Reilly | 39 CASCADE | carpenter |  |
| Chir Brown | 19 Sierra Ave | Union |  |
| Tracy Sullivan | 2501/8A SFD. Fairfax | Chef |  |
| Thomas Horn | 210 Hillside ^{DRIVE} Fairfax | chef / Good Earth |  |
| Roy Stockton | P.O. Box 6 | Burtenker |  |
| LORING JONES | P.O. BOX 713 | WOODCRAFT |  |
| DIEGO BOFFI | 10 WOODS | SAN RAFAEL |  |

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|------------------|-----------------------------|----------------------------|------------------|
| DOUG | 200 FRUSTUCK | N/A | Doug |
| Gavin Gunnigle | 54 Willow | Director Technical Act Mgt | Gavin Gunnigle |
| Matthew Green | 117 MONO | | Matthew Green |
| Christy McDonald | Bolinas Rd. | ESCRAN OFFICE | Christy McDonald |
| Tom O'Callahan | 3 Kraus | Paint Contractor | Tom O'Callahan |
| KEITH HUMPHRIES | 1537 4th | SOUND | Keith Humphries |
| Kamha Navila | 8 Francis Ave. | Product Manager | Kamha Navila |
| Josh Powers | 45 Broadmoor Ave | TOUR GUIDE | Josh Powers |
| Cydney Rae | Bolaway | Hospitality ind. | Cydney Rae |
| JOE RANDON | 2587 PRETTAS WAY, FAIRFIELD | TEACHER | Joe Randon |
| Michael G. | 85 Wood Lane | Fabricator | Michael G. |
| GREGOR | 64 Bothin Rd. | GOOD VIBES | Gregor |
| Veronica Frucht | 1740 SIR FRAUD DRAKE | PROFESSOR | Veronica Frucht |
| KRISTINA SUTHER | 43 LIVE OAK FAIRFAX VA | WAITER FRADELIZIOS | Kristina Suther |
| Anthony | 33 1/2 KIRK RD | Handyman | Anthony |
| Pam | 27 Ann Ln | Fairfax | Pam |

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| Name | Address | Business/Occupation | Signature |
|-------------------|------------------|---------------------|-------------|
| Jason Bards | 256 Banquet Dr | Writer | [Signature] |
| Mike Miller | 71 Park Dr. | | [Signature] |
| William [unclear] | 1415 [unclear] | Attorney | [Signature] |
| Simon Roy | 1415 [unclear] | Artist | [Signature] |
| Robin Goodrich | 277 Tamarack Dr | Farmer | [Signature] |
| John Beattie | 59 Cypress Dr | Fairfax | [Signature] |
| Pat McAlwan | 1700 C Drive | Nurse | [Signature] |
| RYAN SCOTT | 8 STETSON AVE #2 | MUSICIAN | [Signature] |
| DAN BURNER | 45 RYAN DR | MUSICIAN | [Signature] |
| Jedie Kortum | 75 Bosque | Author | [Signature] |
| Mike Matheny | 75 Bosque | Builder | [Signature] |
| DAVID BELL | 10 FERNWOOD | DESIGNER | [Signature] |
| Tom [unclear] | Cranbury, NJ | Sales | [Signature] |
| Chris Ingegneri | 14 Bolinas Rd | Director Bus Dev | [Signature] |
| SIMON COSTA | BOX 625 FAIRFAX | MUSICIAN/DRIVER | [Signature] |
| Tomás A. Galvez | P.O. 1358 | Ret. | [Signature] |

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|--------------------|-------------------------|-------------------------------------------------------|--------------------|
| Clare S. Teclom | 20(A) Hill Ave, Fairfax | Floor Manager | Clare S. Teclom |
| Michael Washington | 701 Drake Ave, Manassas | Tattooer | Michael Washington |
| Jon Corman | 37 Oak Springs Dr | BD | Jon Corman |
| JOSH YOUNG | 761 Las Colindas Rd | Brain Surgeon | JOSH YOUNG |
| LARA RUZOU | 9212 Woods Lane | Fairfax VA | Teacher |
| Caitlin Ryan | 84 Pine Drive | Fairfax VA | Caitlin Ryan |
| Sarah Hestetter | 279 Bolinas Rd | Property Manager | Sarah Hestetter |
| David Hestetter | 279 Bolinas Rd | Attorney | David Hestetter |
| Victoria Zedrow | 6 Geary Ave | Conformist | Victoria Zedrow |
| L. V. D. D. D. | 155 Anderson Dr | E-life Entertainment | L. V. D. D. D. |
| Christine Boser | 155 Anderson Dr | Elite Entertainment & Cosmetologist/Massage Therapist | Christine Boser |
| Jacques Hartley | 336 Laurel S.A. CA | Stagehand | Jacques Hartley |
| Katie Buerkle | 351 Olney | Therapist | Katie Buerkle |
| Kelly Thompson | 245 Johnstone Dr. | Sales | Kelly Thompson |
| Alex Kuslits | 1821 5th Ave | Therapist | Alex Kuslits |
| MARLINT WASHUKU | 30 Creek Rd. | YOGA TEACHER | MARLINT WASHUKU |

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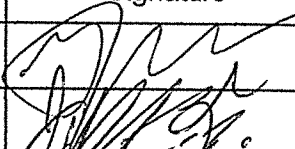
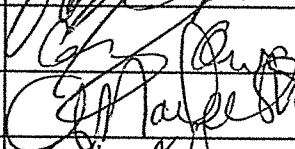
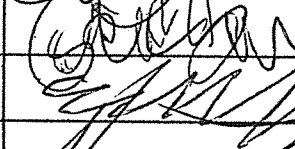

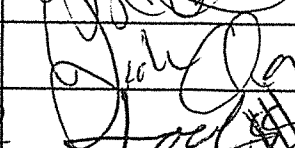
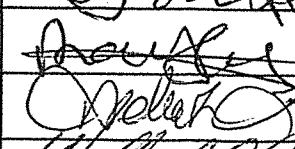
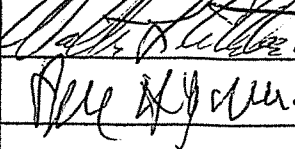
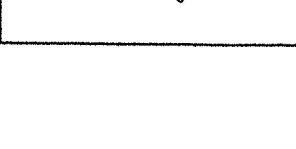

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| GREG ROSE | 30 CREEK RD. | COACH |  |
| Jason Galamba | 86 Spring Ln. | Entrepreneur |  |
| Cory Ower | 56 Rhinestone | VP at Earthwire |  |
| Marlee Moore | 314 Monroe | GRAD STUDENT |  |
| Nash Schae | 1200 LEGGERS ST New Orleans LA 70112 | Teacher/mentor |  |
| Elliott Montemayor | 409 Miller Creek | musician |  |
| Jack Kary | 15 Taylor Street | Software |  |
| Max Druehl | 100 Scenic Rd | Father |  |
| Sage Buckley | 67 Taylor Ave | Author |  |
| John Cha | 5 Scenic Dr | Auto Repair | |
| Jael Epstein | 60 Manor Rd | LAWYER | |
| May Gerardo | 65 Ballinas Rd | waiter | |
| Deborah Unger | 93 Scenic | Baker | |
| Walt Cartbach | 2 Yonder P.S.A. | teacher / musician | |
| Fred Wright | 201 C St., San Anito | Computer Engineer | |

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|------------------|-----------------------------------|---------------------|-------------|
| James L. Gira | PO Box 183 | Consultant | [Signature] |
| Pat McMahon | Carrs Tives | 1531 4th St SE | [Signature] |
| Sabbath Godhart | 123 Woodland Fairfax, CA 94430 | Server/Bartender | [Signature] |
| Jessica Olt | 6 Keel CT San Rafael 94903 | Landscaper | [Signature] |
| Arlynn | 46 Belle Ave 94430 | SELF Employed | [Signature] |
| Scott Lafranchi | 124 Mono Ave | Lanyc | [Signature] |
| Tim Halikas | 48 Geary Ave Fairfax | - self - | [Signature] |
| Karina Ramirez | 69 bolinas Ave | Self employed | [Signature] |
| Joey Davis | 100 Sycamore Ave ADH 21 | San Anselmo | [Signature] |
| Robert T. Ahearn | 115 Marinda Dr. | Fairfax/Business | [Signature] |
| Anthony V. Gira | 18 ME CO | FAIRFAX | [Signature] |
| Wanda Ahearn | 18 ME CO | FAIRFAX | [Signature] |
| Isaac Ahearn | 18 ME CO | FAIRFAX | [Signature] |
| Andrea Ahearn | 115 Marinda Ave | Preschool teacher | [Signature] |
| M. Olt | 33 Merwin | Fairfax | [Signature] |
| Sally Greenberg | P.O. Box 841 Fairfax | Man of Leisure | [Signature] |

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

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

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

Please show support at the Planning commission meeting on October, 20th at 7pm.
© The Warmth Club 10/20/17 5:00 PM

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

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

[illegible]

Linda Neal

From: Mimi Newton [REDACTED]
Sent: Wednesday, June 08, 2016 9:48 PM
To: Jim Moore; Linda Neal
Subject: Fwd: Thoughts on acoustic and amplified music

Jim & Linda

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

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

From: Helmmusic [REDACTED]
Date: Wednesday, May 18, 2016
Subject: Thoughts on acoustic and amplified music
To: [REDACTED]

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

Helm
Ling Shien Bell
Co-director, Composer, Musician
[REDACTED]
[REDACTED]

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

TOWN OF FAIRFAX

JUN 16 2016

RECEIVED

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

To the Fairfax Planning Commission:

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

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

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

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

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

Mark Bell's notes
for his public comment
to Town Council 9/7/16

Does the sound have meaning?

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

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

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

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

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

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

night time noise increase started about 3 years or so ago

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

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

Daytime violations before the use permit- YEARS!

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

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

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

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

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

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

DJ IS NOT MUSIC

ATTACHMENT E1

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

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

Action requests:

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

New ordinance-

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

Another absurd argument -

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

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

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

noise control two

RECEIVED

SEP 22 2016

Fairfax Town Code

TOWN OF FAIRFAX

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

Bookmark§ 1.12.030 DISTURBING THE PEACE.

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

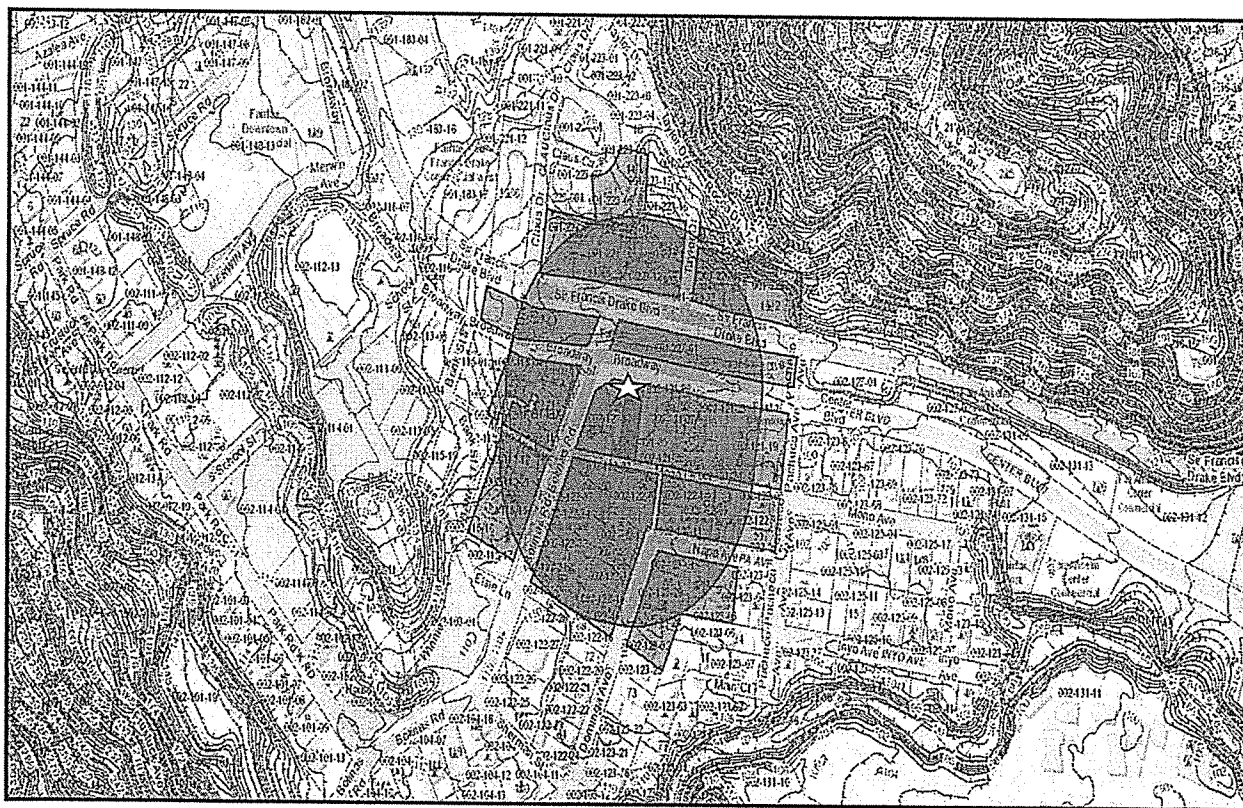
(Ord. 734, passed 6-18-2008)

FROM
MARY BELL

For the
Planning Commission

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:

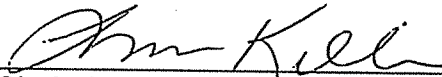
1. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
2. The applicant shall comply with all applicable local, 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 checked="" type="checkbox"/> | Amplified mikes for speakers |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Amplified movies or other entertainment pre-recorded and viewed on a screen |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Amplified mikes for actors performing skits |
| <input type="checkbox"/> | <input type="checkbox"/> | Any electrified sounds not included in this list (please specify) - |
| <input type="checkbox"/> | <input type="checkbox"/> | |
| <input type="checkbox"/> | <input type="checkbox"/> | |

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

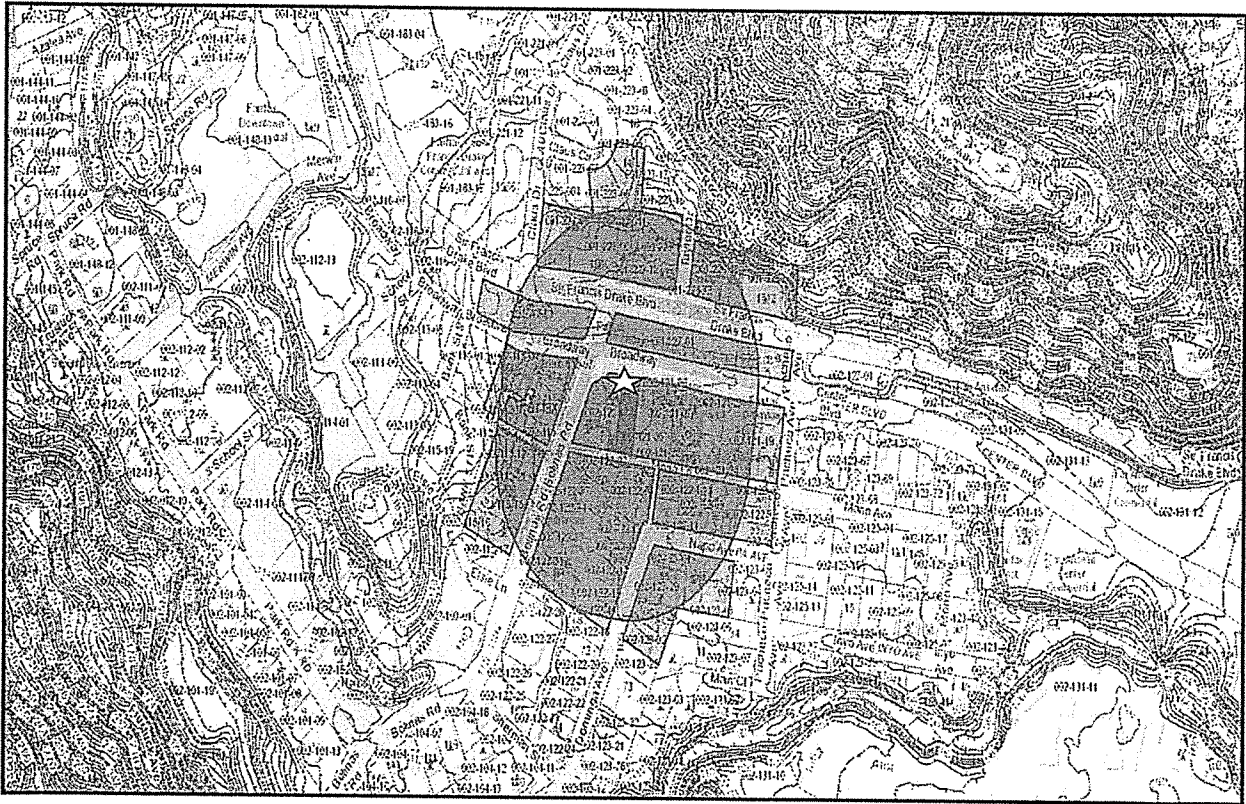
4-5

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

12-15

STAFF REPORT
Department of Planning and Building Services

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



29 BROADWAY

BACKGROUND

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

The property is developed with Peri's Bar and the bar parking lot that provides 16 standard (9 foot by 19 foot) parking spaces and 1 accessible space (17 spaces total). On December 12, 1983, the Town Council approved a Use Permit to allow live entertainment inside the bar subject to the business complying with the following conditions:

1. The music must end by 1:00 AM.
2. The Town's Noise Ordinance, Town Code Chapter 8.20, must be complied with.
3. These conditions and any other appropriate conditions will be reviewed when this use permit and all other use permits for live entertainment in the downtown are brought up for review.

In 1998 both the Design Review Board and the Planning Commission granted discretionary permits to allow a 703-square-foot, covered patio addition to the bar building.

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION

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

ATTACHMENTS

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

RESOLUTION NO. 16-16

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

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

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

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

WHEREAS, the Commission has made the following findings:

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

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

ATTACHMENT A

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

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

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

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

AYES:

NOES:
ABSENT:

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.

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.

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

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

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

ABSENT: Gonzalez-Parber, Hamilton

4. 20 Cypress Drive; Application #16-31

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

Principal Planner Neal presented the staff report.

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

Chair Kehrlein opened the Public Hearing.

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

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

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

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

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

Chair Kehrlein closed the Public Hearing.

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

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

ABSENT: Gonzalez-Parber, Hamilton

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

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

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

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

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

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

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

Chair Kehrlein opened the Public Hearing.

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

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

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

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

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

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

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

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

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

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

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

A resident made the following comments:

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

Mr. Jefferson made the following comments:

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

Chair Kehrlein closed the Public Hearing.

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

Commissioner Green provided the following comments:

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

Commissioner Ackerman provided the following comments:

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

Commissioner Fragoso provided the following comments:

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

Commissioner Newton provided the following comments:

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

Chair Kehrlein provided the following comments:

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

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

DISCUSSION ITEMS

There are no discussion items.