

DRAFT Town of Fairfax Special Planning Commission Meeting Minutes
Fairfax Women's Club
Thursday, April 28, 2016

Call to Order/Roll Call:

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

COMMISSIONERS PRESENT: Bruce Ackerman
 Norma Fragoso
 Shelley Hamilton
 Laura Kehrlein (Chair)

COMMISSIONERS ABSENT: Esther Gonzalez-Parber
 Philip Green
 Mimi Newton

STAFF PRESENT: Jim Moore, Planning Director
 Katie Wisinski, Assistant Town Attorney
 Michelle Levinson, Permit Technician

APPROVAL OF AGENDA

M/s Ackerman/Fragoso, Motion to approve the agenda.

AYES: Ackerman, Fragoso, Hamilton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Green, Newton

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

PUBLIC HEARING ITEMS

There were no Public Hearing items.

DISCUSSION ITEMS

1. Continued discussion of policies and review and editing of an Ordinance amending the Fairfax Town Code to rezone all properties currently located in the Highway Commercial (CH) Zone to Central Commercial (CC) Zone: specifically, updating the permitted and conditional use list in the Central Commercial Zone Classification.

Planning Director Moore presented a staff report.

Commissioner Hamilton asked if the Commission would need to do two readings of the ordinance. Planning Director Moore stated "no"- but the Town Council would need to introduce (first reading) and then adopt (second reading) the ordinance at two, separate meetings. The ordinance would go into effect 30 days after the adoption.

Commissioner Hamilton asked about the schedule for the Town Center Element workshops. Planning Director Moore stated staff is working with the Council to schedule the first workshop date.

Commissioner Hamilton stated she would like to discuss overarching questions that could resolve individual points.

Assistant Town Attorney Wisinski referred to page 12 of the ordinance and noted this looks different from the individually enumerated uses formerly laid out for the principally permitted and conditionally permitted uses. This table replaces both of these sections and pulls together the new use classifications into one

spot. It also draws attention to any limitations or additional use regulations that may apply to some or all of these use classifications.

Commissioner Ackerman asked about the status referred to as "Not Permitted". Assistant Town Attorney Wisinski stated this type of use would need a Zoning Amendment.

Commissioner Hamilton asked if this list was comprehensive of the definitions listed in an earlier chapter. Assistant Town Attorney Wisinski stated "no" because it is envisioned that once they expand the idea of using "Use Classifications" across all the Zoning Districts there will be a lot of uses that do not apply in a particular zone. Staff has listed individual use classifications that one might think would be permitted. Commissioner Hamilton asked if a use is not listed then one should assume that it is not allowed. Assistant Town Attorney Wisinski stated "yes". She discussed the "Limitation" and "Additional Use Regulations" columns and Table 17.100.040 "Limitations".

Commissioner Hamilton asked there was a reason why L1 was applied to commercial uses as opposed to all uses including Industrial, Public and Quasi Public, and Residential. Assistant Town Attorney Wisinski stated the Industrial category does include L1 but Residential does not since that will be determined more by the number of units and how they can be configured on a particular property. It did not seem to be a relevant metric for the Public and Quasi Public category.

Commissioner Hamilton asked if the definitions were meant to be exclusive of each other. Assistant Town Attorney Wisinski stated "yes". Commissioner Hamilton referred to a former discussion regarding liquor and tobacco sales. Assistant Town Attorney Wisinski stated liquor and tobacco sales are highly regulated by the State and local jurisdictions have a limited purview regarding the regulation of sales. Local jurisdiction often regulate these products under business licenses and specialty business regulations- this would not be part of the Zoning Ordinance. Commissioner Hamilton asked about the regulation of firearms. Assistant Town Attorney Wisinski stated she has seen the regulation of firearms including in Zoning Ordinances and this is something the Commission could discuss.

Assistant Town Attorney Wisinski asked the Commission if there was interest in exploring breaking down the Food and Beverage sales use classification into some more refined categories. Chair Kehrlein stated that would be helpful. Commissioner Fragoso agreed.

Commissioner Fragoso referred to Table 17.100.040, "Limitations", the L2 category, and stated she thought the Commission had agreed that they wanted retail on the main floor of the downtown. The document allows for non-retail uses with a Use Permit. Planning Director Moore stated someone could apply for a Use Permit- each space is unique and there could be compelling reasons why it might make sense. Assistant Town Attorney Wisinski stated they need to make sure they are using Use Permit criteria that will be applied to all similarly situated applicants. Commissioner Fragoso stated she would like to see some language added pertaining to the retail nature of the downtown and the need for economic viability of the Town. Commissioner Hamilton suggested they add the General Plan language pertaining to this issue. Assistant Town Attorney Wisinski stated they could make a "formal nod" to General Plan compliance.

Commissioner Ackerman asked that a parenthetical be added under the L1 category indicating that it applies to all commercial uses below. Commissioner Hamilton suggested they place "L1" in all of the categories. The Commission agreed.

Commissioner Hamilton stated it was very helpful to have the subcategories called out in the commercial uses but the residential uses were confusing. She suggested clumping the residential uses together in the definitions. Assistant Town Attorney Wisinski stated that was a great suggestion.

Chair Kehrlein referred to the "light industrial" category and suggested adding another subcategory that would include uses such as a cabinet shop, etc. Assistant Town Attorney Wisinski stated it could be divided into two subcategories- one that deals with appliance repair and services and another that deals with chemicals/substances that the public should not be exposed to regularly. Commissioner Ackerman noted the discussion regarding "light" vs. "heavy" industrial uses were related to characteristics such as scale, size, noise, etc. Assistant Town Attorney Wisinski agreed and stated they could reintroduce uses

such as small appliance repair or cabinetry repair into the commercial discussion and out of the light industrial category. Commissioner Hamilton suggested including an introductory descriptive sentence.

Chair Kehrlein referred to the "personal services" definition and noted some of the uses should require a Use Permit due to noise or delivery issues.

Commissioner Fragoso stated "publishing" should be under the "Light Industrial" or the Limited Commercial (CL) Zone- it is not a personal service. Commissioner Hamilton discussed the difference between "publishing" and "printing". Commissioner Ackerman reiterated it was a matter of scale.

Assistant Town Attorney Wisinski noted staff did some minor amendments to Section 1 of the Ordinance to clean up cross-references to the Commercial Highway (CH) Zone.

Commissioner Hamilton referred to Section 4 and asked if this alluded to prior conversations that said if a discrepancy occurred between tables and map then the map prevails. Assistant Town Attorney Wisinski stated the cleanup was meant to point out that the numbering has changed- but it also deals with how to resolve discrepancies between the Zoning Map and the list of parcels within each zone. She noted at this point in time staff is being guided by the list. Planning Director Moore noted the Assessor's Parcel Number (APN) table is not in this section of the Ordinance. He suggested the following language: "In any sections of the ordinance where there is an APN list, the Zoning Map shall prevail". He noted the APN tables are antiquated.

Commissioner Ackerman referred to the bottom of Section 3 and noted there should be an "M" in parenthesis before the PD, Public Domain Zone.

Commissioner Hamilton referred to the bottom of Section 6 and asked if there was a Table "X" of the Town Code. Assistant Town Attorney Wisinski stated staff would verify that.

Commissioner Hamilton referred to Section 7 (B) and stated the "Multiple Residential" does not match the name in Section 3, RM "Multiple-family residential zone". Assistant Town Attorney Wisinski stated that change would be made. Commissioner Hamilton noted the reference to duplexes was called out in the RD 5.5-7 zone but not triplexes or apartment buildings. Planning Director Moore stated the intent of the editing was to redact the Highway Commercial (CH) Zone.

Assistant Town Attorney Wisinski referred to Section 9 and stated staff has deleted the Highway Commercial (CH) Zone but left Chapter Number 17.096 in as "reserved".

Commissioner Hamilton referred to Section 11, 4th sentence, and suggested the following language: "Consequently, store frontages *should* be continuous..." Commissioner Ackerman suggested the words "*are intended to be*" or "*are envisioned to be*". The Commission agreed with the language "*are intended to be*". Commissioner Fragoso asked if it would be appropriate to add a reference to the preservation of the historic and architectural character of the town center to this section. Assistant Town Attorney Wisinski stated "yes" but she was not sure if the boundaries of the town center area were congruent with the new CC zone. Commissioner Hamilton suggested adding some preamble language reflective of the L1 limitations. Assistant Town Attorney Wisinski referred to the scale of the desired retail and commercial uses of the Town Center and asked if the Commission was looking for a scale that would allow for a variety of uses. Commissioner Hamilton stated "yes". Commissioner Fragoso stated it should maintain the character and the architecture. Planning Director Moore suggested the following wording: "Consequently, store frontages are intended to be continuous, with a variety of uses, enhancing the historic village character of Town, and scaled such that the automobile...". Commissioner Hamilton liked the idea of using the words "variety" and "diversity".

Commissioner Hamilton referred to Section 12, Table 17.100.040-1, and suggested the following wording for "U": "Designates use classifications requiring approval of a Use Permit". She referred to the last paragraph and stated the wording with respect to the Director of Planning and Building Services was confusing – it sounds like this individual could authorize new use classifications. She suggested the following wording: "Uses not listed are prohibited unless the Director of Planning and Building Services determines that use fits within an existing class". She noted it was clearly written in Section 2,

17.008.030, Use Classifications. Assistant Town Attorney Wisinski agreed that the suggested wording was clearer.

Chair Kehrlein asked for comments on the table starting on page 12.

Chair Kehrlein referred to page 12, "Health and Wellness Centers", and stated she saw this as a subcategory of "Offices, Medical" and was not sure why a Use Permit would be required. Commissioner Hamilton agreed and suggested adding "Alternative Medicine" in the definition of "Medical" and move "Health and Wellness Centers" into that category. Commissioner Ackerman stated he assumed the difference was one of scale. Assistant Town Attorney Wisinski stated staff left the definition blank and would like some further direction. Commissioner Hamilton stated the difference was appointment-based services vs. drop-in classes. Assistant Town Attorney Wisinski stated they need a way to capture the Health and Wellness concept and she is hearing from the Commission is that it fits more naturally within the medical offices category. Commissioner Hamilton stated the Health and Wellness Center category should be added to the Offices, medical category. Exercise, aerobics studios, yoga classes, etc. should be in the Health Club category but they should add a Personal Improvement/Instructional category for crafts, arts, music studios, etc. Commissioner Fragoso stated it should require a Use Permit.

Commissioner Hamilton stated medical laboratories should be limited to a certain percentage of use. Commissioner Ackerman stated it was already listed as "accessory" to the medical office use.

Assistant Town Attorney Wisinski referred to the supplemental handout regarding assembly spaces (clubs, lodges, YMCA's, etc.) and asked if the Commission would like to add provisions that allow for that type of use in the CC Zone. Commissioner Fragoso stated it should require a Conditional Use Permit with the L2 and L5 qualifiers.

Commissioner Ackerman referred to page 13, "Service stations", and stated he would like it to read "Fueling and Service stations". Assistant Town Attorney Wisinski stated she would like to review the other zoning districts to see whether or not new gas stations would be permitted. Commissioner Ackerman noted they need to keep in mind that it might not be gasoline but rather biodiesel, electric car charging station, etc.

Chair Kehrlein stated they need to have a discussion about the residential uses such as day care centers, etc. Assistant Town Attorney Wisinski stated she would create a line item that would capture the list of educational uses. She asked how this use should be treated. Commissioner Fragoso stated a Use Permit should be required. She noted the chart indicates that a Small Family Day Care Home needs to be on the second floor but she thought there could be some licensing restrictions that preclude second floor use. Assistant Town Attorney Wisinski stated this use has to be permitted in the same way that other residential uses are permitted within the same district.- all residential uses in this district are only allowed on the second floor. Commissioner Hamilton stated she remembers conversations about allowing residential uses in the back. Assistant Town Attorney Wisinski stated she would revisit the language in the General Plan. Chair Kehrlein stated a special type of residential use in the back could be appropriate with a Use Permit.

Commissioner Hamilton referred to page 14, L-1, and asked for the following modification to the first sentence: "Commercial uses.....are allowed as indicated in Table 17.100.040-1 Limitations".

Commissioner Hamilton referred to page 15, Table 17.100.040-1, Additional Use Regulations (C), and noted the provision regarding square footage limits would impact the types of residential uses that would be allowed. Assistant Town Attorney Wisinski agreed. Commissioner Hamilton referred to (A) and asked for the elimination of the words "by right".

Commissioner Hamilton referred to page 15, Section 13, and asked why the reference to accessory structures was deleted. Assistant Town Attorney Wisinski stated the idea was that each of the use classifications would have uses that are accessory to them. Staff could discuss adding an additional use regulation (E).

Commissioner Ackerman asked about page 15, Section 15- CEQA. Assistant Town Attorney Wisinski stated this was left blank since staff could not foresee all the possible impacts. Staff is preparing a list regarding applicable CEQA analysis that could apply.

Commissioner Ackerman referred to page 3, "With take-out services" and asked for the following amended language: "Eating....and/or drinks *for off-site consumption*....". He stated on page 6, "Second Unit", the Section number was left off. Assistant Town Attorney Wisinski stated it should read "Chapter 17.048".

Commissioner Hamilton referred to page 6 and asked if all Residential care homes need to be licensed. Assistant Town Attorney Wisinski stated the first paragraph deals with entities licensed by the Department of Social Services. The second paragraph deals with entities licensed by the Department of Health.

Planning Director Moore briefly discussed his supplemental memorandum. He asked the Commission if they wanted to add provisions for Cultural institutions, museums, art galleries, etc. They are allowed under different categories. Commissioner Fragoso stated they need to affirmatively add them to this new Zoning Ordinance with a Use Permit. Planning Director Moore referred to assembly spaces (clubs, lodges, YMCA's, etc.) and asked if the Commission would like to add provisions that allow for that type of use in the CC Zone. Commissioner Fragoso stated this use should require a Conditional Use Permit with the L2 and L5 qualifiers.

Planning Director Moore asked if there were other uses that have not been accounted for or that the Commission envisions in the downtown fabric. Commissioner Hamilton stated staff could probably come up with some ideas.

Planning Director Moore asked if Adult businesses- retail sales and entertainment should be called out as a separate category. Assistant Town Attorney Wisinski stated they are treated differently because of the First Amendment element to them. The Town can regulate them on the basis of secondary impacts to the community but cannot deny them outright. Commissioner Fragoso stated they should require a Use Permit. Assistant Town Attorney Wisinski stated they need to lay the groundwork that would apply to all applicants. Commissioner Hamilton asked staff to take a look at what other communities are doing.

Planning Director Moore stated staff would do the necessary follow-up and bring the draft ordinance to the Commission at a Special Meeting.

COMMISSIONER COMMENTS AND REQUESTS

There were no reports.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Toni DeFrancis
Recording Secretary

DRAFT Town of Fairfax Regular Planning Commission Meeting Minutes
Fairfax Women's Club
Thursday, May 19, 2016

Call to Order/Roll Call:

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

COMMISSIONERS PRESENT: Norma Fragoso
 Esther Gonzalez-Parber
 Philip Green
 Shelley Hamilton
 Laura Kehrlein (Chair) (arrived 8:15)
 Mimi Newton (arrived 7:05)

COMMISSIONERS ABSENT: Bruce Ackerman

STAFF PRESENT: Jim Moore, Planning Director
 Linda Neal, Principal Planner
 Michelle Levinson, Permit Technician

APPROVAL OF AGENDA

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

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

1. 2626 Sir Francis Drake Boulevard; Application #16-21
Request for a Use Permit to temporarily park up to 6 yellow school buses and up to 6 employees vehicles on the Christ the Victor Church Site during the week; Assessor's Parcel No. 174-070-17; Planned Development PDD Zone; Aubry Smith, Marin Transit Authority, applicant; Christ the Victor Lutheran Church, owner; CEQA categorically exempt per Section 15304(e)

Commissioner Hamilton asked about the time frame for the permit. Planning Director Moore stated it would expire when the construction begins on the senior housing project.

Commissioner Green suggested a change in the language of the resolution.

M/s Green/Hamilton, Motion to approve Consent Calendar item #1, application #16-21, 2626 Sir Francis Drake Boulevard, with the suggested amended language to the resolution.
AYES: Gonzalez-Parber, Green, Hamilton, Newton, Acting Chair Fragoso
ABSENT: Ackerman, Newton, Chair Kehrlein, Acting Chair Fragoso

Commissioner Newton arrived at the meeting.

2. 303 Bolinas Road; Application #16-16
Request for a Use Permit, Parking Variance and Residential Second Unit Square Footage Variance to construct a new, 713-square-foot residential second unit behind an existing 2,659 square-foot, single-family residence; Assessor's parcel No. 002-033-02; Residential RD 5.5-7 Zone District; Laura Kehrlein, Architect, William and Martha Lawlor, owners; CEQA categorically exempt, Section 15303(a) and 15305(a).

Permit Technician Levinson presented a staff report.

Commissioner Gonzalez-Parber asked which parking space would encroach into the side yard setback. Permit Technician Levinson stated the eastern space would encroach. Acting Chair Fragoso asked if this was the space that would relocate the hot tub or the shed. Permit Technician Levinson stated the space where the hot tub currently exists complies with the setback requirements- it is the space next to that, closer to the rear yard. Planning Director Moore noted staff is of the opinion that the stairway could be moved which would allow the space to comply. Commissioner Gonzalez-Parber asked if tandem parking was allowed in this zone. Senior Planner Neal stated only guest spaces could be tandem.

Commissioner Green asked if this second unit would be counted toward the RHNA numbers. Planning Director Moore stated "yes".

Commissioner Newton noted some trees would need to be removed that are within the footprint of the cottage. She asked if this would need to be approved by the Tree Committee. Planning Director Moore stated "yes".

Acting Chair Fragoso if the three spaces indicated in the plans were required for the new unit. She asked how many spaces were required for the house. Principal Planner Neal stated two on-site spaces were required for the main house- the second unit requires one. The guest space for the main house was along the property frontage in the public right-of-way.

Acting Chair Fragoso opened the Public Hearing.

Mr. Fred Devine, architect, discussed the project. This is a reasonable, straightforward second unit. He thought that Green Points allow them to exceed the residential second unit square footage requirement (13 feet). They are willing to revise the plans to comply. Commissioner Green stated this applies to floor area ratios (FAR's). Mr. Devine discussed the parking arrangement. The parking space that encroaches into the side yard setback is 9'x19' and he would be opposed to tearing out the stairs.

Commissioner Green stated the design for the cottage was beautiful but it should comply with the 700 square foot requirement- he did not want to set a precedent. He would be inclined to grant the side yard setback variance so they do not have to change the stairs.

Commissioner Gonzalez-Parber stated there was ample room in the backyard to locate another parking space. She asked if they could rotate the last run of the stairs to the south. Mr. Devine stated that was an option but it would be taking up yard space.

Acting Chair Fragoso asked about a different configuration for the parking and using the space that does not comply as a turn-around. Mr. Devine stated the yard was important and it made more sense to use the space where the hot tub was located.

Permit Technician Levinson discussed a different scenarios suggested by staff- grant a variance for a compact space (8' X 16') as the third space to replace the one that encroaches into the side yard setback.

Acting Chair Fragoso closed the Public Hearing.

Commissioner Green stated he liked the staff recommendation for a compact space. He also wants the second unit reduced to 700 square feet.

M/s Hamilton/Green, Motion to continue application #16-16, 303 Bolinas Road, with the suggested modifications for a compact parking stall and reduction of the second unit to 700 square feet, and direct staff to return with the resolution.

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

Acting Chair Fragoso stated the 10-day appeal period would begin after adoption of the resolution. .

3. 1625 Sir Francis Drake Blvd. and 5 Belle Avenue; Application #16-17
Request for a Use Permit, Parking Variance and Design Review to convert a single-family residence to 2 living units and office space for the adjacent restaurant that is also located on the property and shares a parking lot with the residential structure; Assessor's Parcel No. 002-211-21; Highway Commercial CH Zone/Residential RD 5.5-7 Zone; Kelly Day-Medina, applicant/owner; CEQA categorical exemption, Section 15301(a), 15303(b)

Chair Kehrlein arrived at the meeting and took her seat at the dais.

Principle Planner Neal presented the staff report. She noted the site was very unusual in terms of its zoning- half is in the Highway Commercial Zone and the other half is in the RD 5.5-7 Residential Zone.

Commissioner Green stated they need to make sure the office is not used as a living space. He noted Traffic Engineer Parisi was not sure if the ADA parking space would have an ADA compliant path of travel to the restaurant of the building. Principal Planner Neal stated it would be very difficult to change the sidewalk around those trees to get a minor change in the slope.

Chair Kehrlein asked if the Building Official had any comments about the handicapped loading space. Principal Planner Neal stated he said it was fine.

Chair Kehrlein referred to the abatement process of the other unit and asked if fines had been levied or a deed restriction requirement. Principal Planner Neal recommended the Commission make the deed restriction (only two living units) a Condition of Approval.

Chair Kehrlein opened the Public Hearing.

Mr. Art Chartock, architect, stated they agree to all the conditions with the exception of Condition #6- the owner would like to keep the shower.

Ms. Kelly Day, owner, stated her daughters spend a lot of time at the restaurant and they use the shower. She has no intention of living in the office. Principal Planner Neal stated staff has no problem with allowing the shower to remain.

Commissioner Gonzalez-Parber asked how the trash would be accessed. Ms. Day stated she is working with the recycling company and they are down to a small container. Commissioner Gonzalez-Parber asked if the trucks could get into the new parking lot. Ms. Day stated "yes".

Chair Kehrlein was concerned that the loading zone was not the right width. She asked for an explanation for the parking configuration. Mr. Chartock stated they wanted to get the handicapped space at a more convenient location to the lift.

Chair Kehrlein closed the Public Hearing.

Commissioner Green stated he would like to add a condition that the applicant shall provide nine parking spaces for the restaurant.

M/s Fragoso/Hamilton, Motion to approve application #16-17, 1625 Sir Francis Drake Boulevard, and adopt Resolution #16-21 setting forth the findings and conditions in the staff report with the addition of the deed restriction on the residential unit and the additional condition recommended by Commissioner Green.

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

ABSENT: Ackerman

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

4. 22 Meadow Way; Application #16-18
Request for Hill Area Residential Development, Excavation and Encroachment Permit(s), Design Review, and a Parking Variance for a 50% remodel/expansion of a single-family residence; Assessor's Parcel No. 003-122-50; Residential Single-Family RS 6 Zone; Rich Rushton, Rushton

Chartock Architects, applicants; Nadim and Stacy Nahas, owners; CEQA categorically exempt Section 15301(e)(2).

Principal Planner Neal presented a staff report.

Commissioner Fragoso asked if the project would include a greywater system- this seemed like an excellent project to do a "landscape to laundry" system. Principal Planner Neal stated they do have to comply with MMWD requirements.

Commissioner Green stated the house was in a very open area and it was "screaming" for solar.

Chair Kehrlein opened the Public Hearing.

Mr. Nadim Nahas, owner, stated they oriented the addition in such a way that the first level is down slope from the existing roof and the upslope addition is down slope from the existing structure. The front of the house will have clerestory windows to provide privacy. The trees are being removed per the direction of the Fire Department.

Mr. Rushton stated the greywater system would be an easy thing to do and there are relatively inexpensive pumps and tanks that can be purchased.

Commissioner Green asked if they had considered solar panels. Mr. Rushton stated "no" since the property is blocked by trees on the south side.

Chair Kehrlein closed the Public Hearing.

Chair Kehrlein stated this is a beautiful piece of property and a great design.

Commissioner Green suggested some changes in the language of the resolution under the "Covered Parking Variance" section

M/s Newton/Fragoso, Motion to approve application #16-18, 22 Meadow Way, and adopt Resolution No.16-12 setting forth the findings and conditions in the staff report with the amended language suggested by Commissioner Green.

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

ABSENT: Ackerman

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

5. 93 Rocca Drive; Application #16-19

Request for a Use Permit to legalize a bedroom and bathroom addition associated with a single-family residence; Assessor's Parcel No. 001-225-27; Residential Single Family RS 6 Zone; Rich Dowd, Architect/Applicant; Bernell and Tony Loeb, owners; CEQA categorically exempt, Section 15301(e)(1).

Principal Planner Neal presented the staff report.

Commissioner Gonzalez-Parber asked if the applicant had considered legalizing the second unit as opposed to converting it into the house. Principal Planner Neal stated they do not have any way to provide the parking. They are thinking about converting it to a junior second unit after it becomes legalized.

Commissioner Newton asked if the kitchen would need to be removed from the former second unit. Principal Planner Neal stated they would need to remove either the sink or the counter.

Commissioner Hamilton asked if the spiral staircase would be taken out should the unit be converted to a junior second unit. Principal Planner Neal stated "no"- junior second units should be internally connected with the house.

Chair Kehrlein opened the Public Hearing

Ms. Bernell Loeb, property owner, stated they were attracted to the house because of the additional space- they are artists.

Mr. Rich Dowd, architect, thanked staff for helping them through the process. The proposal is simple, effective, and inexpensive.

Mr. Randy Engle, Taylor Drive, stated this is a creative, low impact, way of enhancing the space.

Ms. Maryanne Cannel was concerned that there was no extra parking required for a junior second unit. She stated their driveways connect with the Loeb's and she was concerned about getting blocked in.

A resident stated he called the Town four times regarding construction going on at the property. He wanted the project to be monitored.

Chair Kehrlein opened the Public Hearing

Commissioner Green stated he liked the project- it was well planned and very nice. Chair Kehrlein agreed.

M/s Fragoso/Gonzalez-Parber, Motion to approve application #16-19, 93 Rocca Drive, and adopt Resolution No.16-13 setting forth the findings and conditions in the staff report.

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

ABSENT: Ackerman,

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

6. 118 Tamalpais Road; Application #16-20

Request for a Side-Yard Setback Variance and an Encroachment Permit to rebuild access stairs to an existing single-family residence; the original access stairway was destroyed in a land slide 5 years ago; Assessor's Parcel No. 002-121-61; Residential Single-Family RS-6 Zone; Nick Rasic, Applicant, Federal National Mortgage Association, owner of record; CEQA categorically exempt, Section 15302 and 15305(a)

Principal Planner Neal presented a staff report. She noted this was a necessary improvement that had to be built- the situation was not safe.

Commissioner Fragoso asked if people were living in the house. Senior Planner Neal stated "yes". Commissioner Gonzalez-Parber asked if the house was condemned. Senior Planner Neal stated "no".

Chair Kehrlein opened the Public Hearing.

Ms. Claudia Williams, attorney for Federal National Mortgage Association (owners), stated they agree with the staff report.

Commissioner Green asked Ms. Williams about a lawsuit that was referenced in her letter dated May 17, 2016. Ms. William stated the case pertains to Mr. Bess' alleged agreement to repurchase the property from Fannie Mae after the foreclosure.

Mr. Larry Bragmen, attorney for Mr. Walter Bess, discussed the facts of the case. The pending lawsuit is not about possession but about ownership of the house. He would like an opportunity for his engineer to look at a complete set of plans. He asked the Commission to continue this application.

Commissioner Newton asked Mr. Bragman asked to respond to staff's safety concerns. Mr. Bragman stated the homeowner has had a nurse visit the house once a week since 2011 with no problems. Commissioner Newton stated emergency medical personnel might not be able to access the property. She has concerns about allowing this state of disrepair to continue. Mr. Bragman stated the intent of these proceedings was to leverage the Bess family out of their home.

Ms. Williams discussed the court orders with respect to the amended complaints. She stated the applicants were requesting a variance and encroachment permit to build stairs to take care of the unsafe conditions. The stairs are not up to code.

Commissioner Gonzalez-Parber stated the work required seems quite substantial and she asked if there were structural drawings done by a civil engineer for the replacement of the stairs. Principal Planner Neal stated the plans given to the Commission have been stamped by the soils engineer. If the Commission has concerns they can ask the Town Engineer to review the plans prior to issuance of the Building Permit.

Chair Kehrlein closed the Public Hearing.

Commissioner Green asked if the plans were sent to the applicant. Principal Planner Neal the engineer has to authorize the release of stamped plans- staff cannot copy them without his or her authorization. This engineer said "no"- but there is always a copy in the public packet.

Chair Kehrlein stated it would be worthwhile to send these types of project to the Town Engineer during the Building Permit phase.

Commissioner Green asked for clarification about which tree would be removed. Principal Planner Neal stated the tree T2 would be removed.

Commissioner Fragoso asked if the Town Attorney has reviewed this application. Principal Planner Neal stated "no" since there are no legal questions with respect to the discretionary permits. Commissioner Newton stated Mr. Bragman had mentioned his client's due process rights. Principal Planner Neal stated the Commission could ask the applicant to extend the Permit Streamlining Act time limit.

Commissioner Green stated the underlying litigation was irrelevant to the issue of the stairs. Repair of the stairs would benefit the residents. The health and safety issue is paramount.

Principal Planner Neal stated it would take the Town Engineer at least a month to review the plans and produce a report.

Chair Kehrlein asked the applicant if they would be willing to request an extension. Ms. Williams indicated she wanted the Commission to act on the application tonight.

Commissioner Green stated the Commission should act tonight and condition the approval on review of the engineering. Commissioner Fragoso agreed and stated the applicant should pay for the review.

Commissioner Newton stated the request for a 30-day continuance was reasonable and she was disappointed that the applicant would not agree to it.

M/s Hamilton/Fragoso, Motion to approve application #16-20, 118 Tamalpais Road, and adopt Resolution No.16-13 setting forth the findings and conditions in the staff report with the additional condition that the Town Engineer review and approve the plans

AYES: Fragoso, Green, Hamilton, Chair Kehrlein

NOES: Newton

ABSTAIN: Gonzalez-Parber

ABSENT: Ackerman

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

DISCUSSION ITEMS

MINUTES

7. Minutes from the February 25, 2016 Special Meeting, the March 17, 2016 Regular meeting, the April 21, 2016 Regular Meeting, and the April 28, 2016 Special Meeting

M/s Newton/Kehrlein, Motion to approve the February 25th minutes as submitted, March 17th minutes as amended, April 21st minutes as submitted. The minutes from the April 28th meeting shall be continued.
AYES: Fragoso, Gonzalez-Parber, Green, Hamilton, Newton, Chair Kehrlein
ABSENT: Ackerman
ABSTAIN: Hamilton (March 17th minutes), Chair Kehrlein (April 21st minutes), Gonzalez-Parber, Newton, and Green (April 28th)

PLANNING DIRECTOR'S REPORT

Planning Director Moore reported the Commission would be meeting next Thursday to work on the Draft Ordinance rezoning properties in the Highway Commercial (CH) Zone to the Central Commercial (CC) Zone. The first Town Center Plan Workshop will be held on Tuesday, June 14th from 6:30 p.m. to 9:30 p.m. at the Women's Club. They will be looking at the existing policies of the Town- the Town Center Element, the Parkade Improvements Plan, the recent updates to the Bicycle and Pedestrian Master, etc. He will be presenting an urban design analysis of the CH and CC areas of Town. The focus will be on coming to a consensus on the issues and opportunities in the Town Center area.

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Hamilton stated the Commission had developed a wish list which included amending the Town Code regarding parking. Planning Director Moore stated he would discuss this with the Council at tomorrow morning's budget session.

Commissioner Green stated he recently walked the Wall property and he suggested installing signs that would locate the building pads. Planning Director Moore stated he would pass that suggestion on to the property owner.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Toni DeFrancis
Recording Secretary

DRAFT Town of Fairfax Special Planning Commission Meeting Minutes
Fairfax Women's Club
Thursday, May 26, 2016

Call to Order/Roll Call:

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

COMMISSIONERS PRESENT: Norma Fragoso
Esther Gonzalez-Parber
Laura Kehrlein (Chair)
Mimi Newton

COMMISSIONERS ABSENT: Bruce Ackerman
Philip Green
Shelley Hamilton

STAFF PRESENT: Jim Moore, Planning Director
Linda Neal, Principal Planner
Michelle Levinson, Permit Technician

APPROVAL OF AGENDA

M/s Fragoso/Gonzalez-Parber, Motion to approve the agenda.

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

ABSENT: Ackerman, Green, Hamilton

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

PUBLIC HEARING ITEMS

There were no Public Hearing items.

DISCUSSION ITEMS

1. Continued discussion of policies and review and editing of an Ordinance amending the Fairfax Town Code to rezone all properties currently located in the Highway Commercial (CH) Zone to Central Commercial (CC) Zone: specifically, updating the permitted and conditional use list in the Central Commercial Zone Classification.

Planning Director Moore presented a staff report.

Chair Kehrlein asked for a page-by-page review of the ordinance.

Chair Kehrlein referred to page 2 of the staff report and wanted to make sure the zoning map would take precedence in the event there was a discrepancy between the map and the Assessor's Parcel Number (APN) table. Planning Director Moore stated the map is the precedence since the table is being redacted with regard to the Central Commercial Zone.

Commissioner Newton referred to page 2, Section 1, "Kennel" and asked if the ordinance has a definition for both "kennel" and "kennels". Principal Planner Neal stated "yes". Commissioner Newton stated the definition should be in the plural. Commissioner Fragoso agreed.

Chair Kehrlein referred to page 4, Section 3, "Commercial Uses" and explained that some of these uses were taken out of the "light industrial" category.

Chair Kehrlein referred to page 5, Section 3, "Financial Institutions", and noted most have an automated teller machine. Principal Planner Neal stated if an ATM machine is outside of the building then it needs Design Review. Planning Director Moore noted drive-through ATM's are permitted but with limitations. Commissioner Fragoso asked about the limitations. Principal Planner Neal stated traffic/parking impacts could be one limitation. Commissioner Newton stated this would be based on the Conditional Use Permit criteria.

Chair Kehrlein referred to page 6, Section 3, and pointed out the addition of the "Maintenance and Repair Services" which came out of the previous "Light Industrial" category. She asked how the light industrial types of uses (warehouses, etc.) would be handled. Planning Director Moore referred to the Table on page 14, "Industrial Uses- Light Industrial", and noted the Commission covered that and added the appropriate stipulations. Commissioner Newton asked why the definition of "Light Industrial" was left out in the ordinance. Commissioner Fragoso agreed- some definition for what they are now calling "Light Industrial" would be appropriate. Planning Director Moore stated staff would take a look at that.

Chair Kehrlein referred to page 14 and asked why "Light Industrial" was a Permitted Use and would not require a Use Permit. Planning Director Moore agreed- the "P" would be changed to a "U".

Commissioner Newton referred to the "publishing" vs. "printing" discussion at the last Commission meeting and asked what category desktop publishing (Internet-based services) was placed. Chair Kehrlein stated "publishing" was stricken from the "Personal Services" category. Commissioner Newton stated printing was more industrial. Commissioner Fragoso stated the Commission saw publishing as being more industrial. Commissioner Newton disagreed- the Commission discussed desktop publishing on a computer and the process of making a book would be considered printing and bookbinding. Planning Director Moore suggested not eliminating "publishing" from the Personal Services category and calling it "desktop publishing". Commissioner Newton discussed the concept of "volume" and asked if the Commission drew a distinction between small vs. large scale. Commissioner Fragoso stated "printing and publishing" could be added to the definition of "Light Industrial" and "desktop publishing" could remain under "Personal Services". Planning Director Moore stated "large scale book printing and binding" would be added to the definition of Light Industrial and "desktop publishing" would remain in the Personal Services category.

Chair Kehrlein referred to page 6, Section 3, and stated "self-service laundries" should be moved from the Personal Services category to the Cleaning Services category.

Commissioner Fragoso referred to page 7, Vehicle/Equipment Sales and Services, and noted the table on page 14 was blank with respect to this category. Commissioner Fragoso stated a Use Permit should be required.

Commissioner Newton asked if garbage or recycling services were addressed. Planning Director stated that could be added to the new definition of Light Industrial.

Chair Kehrlein noted the Commission did not discuss Residential Uses at the last meeting. She asked for comments.

Commissioner Fragoso referred to page 8, "Family Day Care Home" and stated she thought the limit was six children. Principal Planner Neal stated cities could not require a Use Permit for a business with six or fewer children in a residential area. This category is talking about larger day care centers.

Commissioner Newton referred to page 8, "Adult Day Care Home" and asked that the phrase "including elderly persons" be eliminated. The Commission agreed that this should be a permitted use.

Commissioner Gonzalez-Parber asked if there was a definition for skilled nursing facilities. Planning Director Moore stated this could be added to the Residential Care Home category.

Commissioner Newton had questions about the Congregate Living Facility category. Commissioner Gonzalez-Parber suggested replacing the word "apartments" with "individual living quarters". Commissioner Newton suggested the following wording: "group cooking facilities". Commissioner Fragoso suggested renaming the category from Congregate Living Facility to "Group Living Home".

Chair Kehrlein asked where pre-schools were listed in the ordinance. Commissioner Fragoso stated this type of facility was licensed and she was not sure they should be located in the downtown and had requirements that could not be accommodated in the Central Commercial Zone. Principal Planner Neal noted there were several already in existence. They should be allowed with a Use Permit. Commissioner Newton stated a definition for Commercial Child Care should be added. It could be defined as Youth Services (in the Commercial category) and would include commercial day care, educational after school programs, etc.

Chair Kehrlein stated the Congregate Living Facility and Group Residential categories seem to be the same. Commissioner Fragoso stated they could be combined. Commissioner Newton agreed and stated the definition could specify "separate kitchens" or "a central kitchen". Planning Director Moore stated this newly created category could be broadly defined which would allow for variation or exclusion. A Use Permit would be required. Commissioner Newton recommended eliminating the Group Living Home category and replacing it with the following wording in the Group Residential category: "Shared living quarters *with or without* separate kitchen or bathroom facilities... *This classification does not include services and facilities licensed by the State of California*".

Commissioner Newton referred to the Residential Care Home category and noted it did not include medical care. Commissioner Fragoso stated skilled nursing care should be included in this category. Commissioner Gonzalez-Parber disagreed and noted they have other requirements. Commissioner Newton referred to the second paragraph and stated she did not understand the terms "congregate living health facilities" and "family care homes". Chair Kehrlein stated these were terms used in conjunction with State regulations.

Commissioner Fragoso referred to the Single Room Occupancy category and noted there was no definition. Planning Director Moore stated staff would work on a definition.

Commissioner Newton referred to the Second Unit category and suggested eliminating the word "housekeeping".

Commissioner Gonzalez-Parber suggested replacing the word "handicapped" with "disabled" wherever it appears.

Planning Director Moore stated staff would work on the Skilled Nursing category and present it to the Commission at the next meeting. Commissioner Newton stated it should require a Use Permit.

Commissioner Fragoso referred to the Supportive Housing category and noted it fits under a particular Health and Safety Code and is typically a non-profit organization that is not required to be licensed. Transitional Housing is a very specific Federal category that requires a maximum of 18 months stay and not less than 6 months stay (a homeless shelter). It can be a homeless shelter which has a 3-month maximum. Commissioner Newton suggested adding a Homeless/Emergency Shelter category. Planning Director Moore stated this has been added to the Town Code and would be easy to add to the ordinance.

Commissioner Newton stated there was a reference to dispensaries on page 2 and she asked if a delivery service could be run out of this zone. Planning Director Moore stated cultivation would not be allowed in this zone and the idea of delivery services would be coming back to the Commission.

Planning Director Moore stated staff would work on the Skilled Nursing category and present it to the Commission at the next meeting. Commissioner Newton stated it would require a Use Permit.

Commissioner Newton referred to the top of page 11 and asked if the zoning map took precedence over the assessor parcel maps with respect to land use designations. Planning Director Moore stated "yes" but that was not part of the Commission's task tonight- they are simply eliminating the Highway Commercial Zone (CH) and folding it into the Central Commercial Zone (CC). The other zones are not being addressed yet.

Chair Kehrlein asked for comments on the table.

Commissioner Newton referred to page 14, "Adult Day Care" and asked if this use should require a Use Permit. Commissioner Fragoso stated the Town was not allowed to require a Use Permit. It was the consensus of the Commission that the Small Family Day Care Home category, the Residential Care Home category, and the Second Unit category, should be permitted uses; the Large Family Day Care Home category, Multi-Family Residential category, the Single Room Occupancy category, the Emergency Homeless Shelter category, Supportive Housing, and Transitional Housing should require a Use Permit; the Junior Second Unit category should be eliminated from the table. Commissioner Fragoso referred to page 9 and suggested "Multi Family Residential" be renamed "Second Story CC Residential Units". Planning Director Moore stated a property in the CC Zone that was historically residential and converted to commercial should be allowed, with a Use Permit, to be converted back to residential on both floors. The Commission agreed.

Planning Director Moore stated staff would bring back the revisions and clarity on the Commission's questions at the next meeting.

COMMISSIONER COMMENTS AND REQUESTS

Planning Director Moore reported that Commissioner Hamilton was stepping down from the Commission. She would continue until the Council appoints a replacement.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 9:40 p.m.

Respectfully submitted,

Toni DeFrancis
Recording Secretary

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

Call to Order/Roll Call:

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

Commissioners Present: Bruce Ackerman
 Norma Fragoso
 Esther Gonzalez-Parber
 Phillip Green
 Laura Kehrlein (Chair)
 Mimi Newton (arrived 7:15)

Commissioners Absent: Shelley Hamilton

Staff Present: Jim Moore, Planning Director
 Linda Neal, Principle Planner
 Michelle Levenson, Permit Technician

APPROVAL OF AGENDA

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

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

PUBLIC COMMENTS ON NON-AGENDA ITEMS

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

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

Commissioner Newton arrived at the meeting.

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

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

CONSENT CALENDAR

1. **303 Bolinas Road; Application #16-16**
Continued Consideration of a request for a Use Permit and Compact Parking Space Variance to construct a new, 699-square-foot residential second unit behind an existing 2,659-square-foot, single-family residence; Assessor's Parcel No. 002-033-02; Residential RD 5.5-7 Zone District; Laura Kehrlein, Architect, William And Martha Lawlor, owners; CEQA categorically exempt, Section 15303(a) and 15305(a).
2. **252 Cascade Drive; Application #16-26**
Request for a Use Permit to expand an existing, second-story 136-square-foot deck to 235 square feet that would remain attached to a 2,408-square-foot single-family residence, and use a 110-square-foot portion of the first-floor area underneath the proposed deck for storage; Assessor's Parcel No. 003-121-01; RS-6 Single-Family Residential Zone; Chrome Architecture; Jeff Paladini and Theresa Hall, owners; CEQA Categorically exempt per Section 15303(a).
3. **Ordinance Amending the Town of Fairfax Town Code Chapter 5.052 ('Business Taxes, Licenses, and Regulations'), Chapter 7.008 ('Definitions'), Chapter 17.012 ('Zone Districts Established'), Chapter 17.020 ('Design Review Regulations'), Chapter 17.092('CL Limited Commercial Zone'); Chapter 17.096 ('CH Highway Commercial Zone'), and 17.100 ('CC Central Commercial Zone') and Addendum to Mitigated Negative Declaration prepared for the 2010-2030 Fairfax General Plan. The proposed ordinance affects all properties within the Central Commercial (CC), Highway Commercial (CH) and the Limited Commercial (CL) Zoning Districts, as depicted on the Fairfax Zoning Map; categorically exempt from CEQA per 14 C.C.R. Section 15301, 15303, and 15332.**

M/s, Ackerman/Green, Motion to approve Consent Calendar item #1.

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

ABSENT: Hamilton

RECUSED: Chair Kehrlein

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

M/s, Newton/Green, Motion to approve Consent Calendar item #2.

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

ABSENT: Hamilton

RECUSED: Gonzalez-Parber

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

M/s, Newton/Green, Motion to continue Consent Calendar item #3 to the July 21st meeting.

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

ABSENT: Hamilton

PUBLIC HEARING ITEMS

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

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

Principal Planner Neal presented the staff report.

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

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

Commissioner Ackerman had questions about the language regarding the sidewalk.

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

Chair Kehrlein opened the Public Hearing.

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

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

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

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

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

Chair Kehrlein closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:

- She loves the project.

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

Commissioner Fragoso provided the following comments:

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

Chair Kehrlein provided the following comments:

- This is a very unique proposal.
- She looks forward to the business opening soon.

M/s, Ackerman/Green, Motion to adopt the resolution as amended by staff, with the deletion of item #23.

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

ABSENT: Hamilton

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

5. 15 Acacia Road; Application #16-23

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

Planning Director Moore recused himself from this item.

Principal Planner Neal presented the staff report.

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

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

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

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

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

Chair Kehrlein opened the Public Hearing.

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

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

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

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

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

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

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

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

A resident from Acacia Road made the following comments:

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

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

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

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

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

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

Mr. Jeff Kroot, architect, made the following comments:

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

Chair Kehrlein closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:

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

Commissioner Ackerman provided the following comments:

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

Commissioner Green provided the following comments:

- The packet contained a lot of information- hydrology reports from 2007 and 2008. It has been thoroughly investigated.

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

Commissioner Fragoso provided the following comments:

- She urged the neighbors to read the hydrology report contained in the packet.
- She appreciated the two full garage parking spaces.

M/s, Green/Fragoso, Motion to approve Resolution No. 16-19 as amended by Commissioner Green.

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

ABSENT: Hamilton

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

6. 615 Oak Manor Drive; Application #16-24

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

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

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

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

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

Chair Kehrlein opened the Public Hearing.

Mr. Rob Schwartz, owner, made the following comments:

- The neighbor most impacted by the previous landslide has voiced concerns. The building site will not impact the landslide. He continues to work with the neighbor regarding drainage issues.

Ms. Shelley Brock, architect, made the following comments:

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

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

Ms. Shelby LaMotte, landscape architect, made the following comments:

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

Mr. Scott Hochstrasser, land use planning consultant, made the following comments:

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

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

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

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

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

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

Mr. Luther Pahi made the following comment:

- He questioned the need for a five-bedroom, four-bath house and a cottage.

Mr. Schwartz made the following comment:

- This is a modest home given the size of the parcel.

Chair Kehrlein closed the Public Hearing.

Commissioner Green provided the following comments:

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

Commissioner Newton provided the following comments:

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

Commissioner Gonzalez-Parber provided the following comments:

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

Chair Kehrlein reopened the Public Hearing.

Ms. Shelby LaMotte, landscape architect, made the following comments:

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

Chair Kehrlein closed the Public Hearing.

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

Commissioner Fragoso provided the following comments:

- This is a reasonable suggestion.
- She had questions about the purview of the Open Space Committee.

Commissioner Gonzalez-Parber provided the following comments:

- She supports the project with the conditions discussed.

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

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

ABSENT: Hamilton

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

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

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

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

Principal Planner Neal presented the staff report.

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

Chair Kehrlein opened the Public Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Gavin Donagell made the following comment:

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

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

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

Mr. Larry Newman made the following comments:

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

Mr. Kevin Meade made the following comments:

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

Mr. George Osner made the following comments:

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

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

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

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

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

Denile made the following comments:

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

A resident made the following comments:

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

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

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

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

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

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

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

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

Chair Kehrlein closed the Public Hearing.

Commissioner Green provided the following comments:

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

Commissioner Ackerman provided the following comments:

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

Commissioner Newton provided the following comments:

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

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

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

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

Commissioner Fragoso provided the following comments:

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

Chair Kehrlein re-opened the Public Hearing.

Mr. Burkes made the following comment:

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

Chair Kehrlein closed the Public Hearing.

Commissioner Newton provided the following comments:

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

Chair Kehrlein provided the following comment:

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

Commissioner Green provided the following comment:

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

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

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

ABSENT: Hamilton

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

8. 31 Bolinas Road; Application #02-39

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

Chair Kehrlein stated she would recuse herself from this item.

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

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

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

Acting Chair Fragoso opened the Public Hearing.

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

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

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

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

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

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

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

Mr. Josh Burkes made the following comment:

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

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

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

Mr. Kevin Meade made the following comments:

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

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

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

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

Deborah made the following comments:

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

Ms. Bell made the following comments:

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

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

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

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

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

A resident made the following comments:

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

Chris made the following comment:

- He supported the proposal for music outside.

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

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

Acting Chair Fragoso closed the Public Hearing.

Commissioner Gonzales-Parber provided the following comments:

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

Commissioner Green provided the following comments:

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

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

Commissioner Ackerman provided the following comments:

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

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

Commissioner Green provided the following comment:

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

Acting Chair Fragoso provided the following comments:

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

M/s, Green/Gonzalez-Parber, Motion to approve modification of Use Permit, application #02-39, and Resolution No. 16-17, as amended by Commissioner Green

AYES: Ackerman, Gonzalez-Parber, Green, Newton

NOES: Acting Chair Fragoso

RECUSED: Chair Kehrlein

ABSENT: Hamilton

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

DISCUSSION ITEMS

MINUTES

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

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

PLANNING DIRECTOR'S REPORT

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

ADJOURNMENT

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

Toni DeFrancis,
Recording Secretary