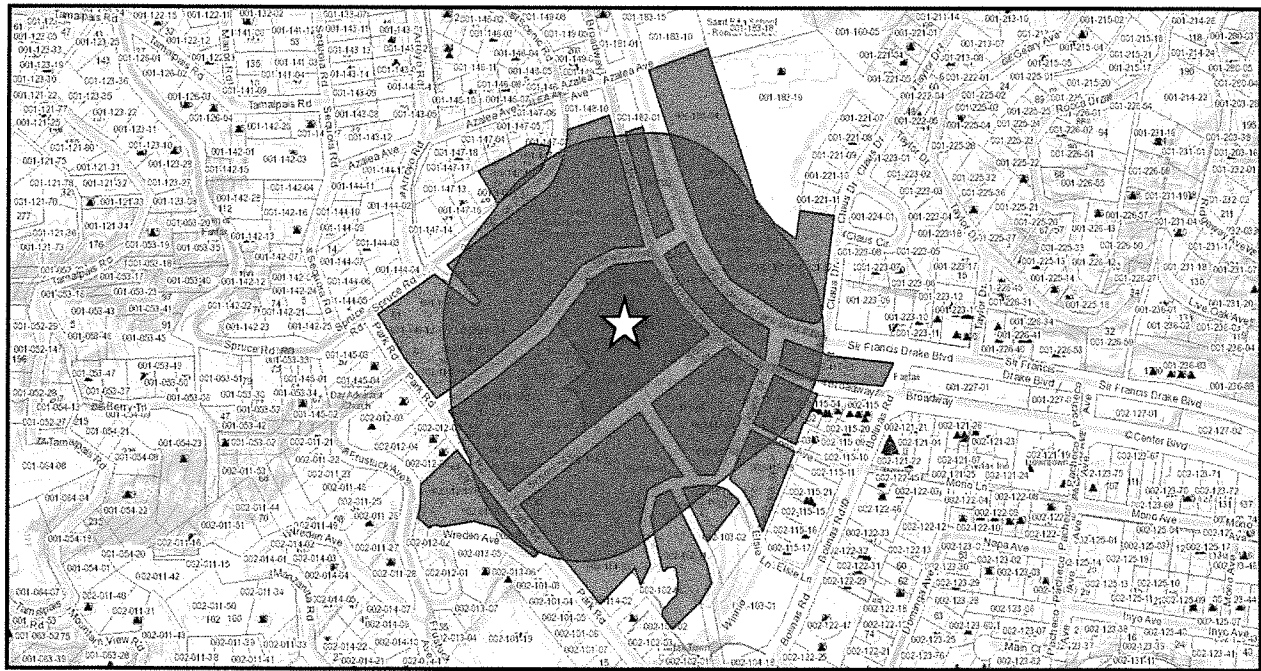


# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

**TO:** Fairfax Planning Commission  
**DATE:** October 17, 2019  
**FROM:** Ben Berto, Director of Planning and Building Services  
 Linda Neal, Principal Planner  
**LOCATION:** 6 School Street Plaza; Assessor's Parcel No. 002-112-13  
**PROJECT:** Conversion of 14 commercial spaces to live/work units  
**ACTION:** Conditional Use Permit, Design Review Permit and Fence Height Variance; Application # 19-14  
**APPLICANT:** Fred Ezazi  
**OWNER:** Same  
**CEQA STATUS:** Categorically exempt, § 15301(a) and (e)(1)



**SCHOOL STREET PLAZA**  
**BLDG. 6: SUITES 110, 270 & 280; BLDG. 8: SUITES 8A2, 8B & 8D; BLDG. 10: SUITES 10C, 10D & 10E; BLDG. 12: SUITES 12B-1, 12C-1, 12C-2, 12D-1 & 12D-2**

## BACKGROUND

The approximately 83,699 square-foot site (1.9 acre) is level where the structures are located and slopes down to the Fairfax Creek which runs along a portion of the southern property line. The level area is also at a higher elevation than the streets of Broadway and Merwin Avenue that run along the site's west and east property lines. The Fairfax Pavilion and the developed and undeveloped portions of the School Street right-of-way are located to the east, Broadway runs along the north side of the site, and Fairfax Lumber is located to the west, across Merwin Avenue.

The site was the location of Fairfax School from 1921 through 1954, when the original structures were torn down and replaced with the existing school buildings, which have become Buildings 8, 10 and 12 School Street Plaza.

It is not clear from the Town records when the public school site was sold to a private owner, but the zoning was changed to CL in 1976, when a developer submitted an application to convert use of the school buildings to commercial. The applicant at the time was Neil Bloomfield, and the owner was listed as the Fairfax School District.

In 1978-79 the Town approved the 6,084 square-foot, 2-story commercial structure at the corner of Broadway and School Street, bringing the total area of commercial buildings to 20,118 square feet. At that time, the Town approved the project allowing the property to comply with the specific parking requirements for personal service businesses and offices found in the Parking Ordinance, Town Code §§17.052.030(F) and (G) rather than the more general restrictive parking standard of 1 parking space for each 200 square feet of commercial space contained in the Limited Commercial Zone District Regulations [Town Code § 17.092.110(B) (2)(a)]. The applicable parking standards approved by the Town at that time are 3 spaces for the first 500 square-feet of commercial space and 1 space for each additional 500 square feet. The site contains 62 parking spaces. 42 spaces are required under the personal service and office standards.

In 2005 the Planning Commission granted a use permit application to allow the conversion of one of the commercial units (12A in Building 12) into an on-site manager's apartment.

For whatever reason, the Town has historically had difficulty with use of School Street Plaza property for residential, versus personal service and office uses. It may be because the plaza is located some distance from the main Sir Francis Drake and Bolinas commercial nexus, or because the spaces, once the size of school classrooms, have been split into smaller areas, which limits the commercial uses that can operate there, and which certainly cannot accommodate certain permitted CL uses such as hospitals, rest homes, and laboratories.

It is interesting to note that many of the uses that currently exist at School Street now are similar to the uses that existed there in 1976 when the zoning was changed to Limited Commercial (CL). For example:

1976: Health Spa (Relax), Dance Studio, Chiropractor, Doctor's office, martial arts studio, restaurant

2019: Hot Tubs/Massage Spa (Frogs), Physical therapy and massage therapy, yoga studio, offices, hair salon.

At some point in the past year or two, the owner has gated off the stairway at the corner of Broadway and Merwin Avenue that led from the parking lot down to the sidewalk. The property owner claims to have been forced to do so because of ongoing garbage dumping. The Fire Department has not noted any fire access/egress issues with this closure.

The Town has had to repeatedly abate over the years the use of the spaces for living units without the required approval of a Conditional Use Permit from the Planning Commission. Residential uses are listed as conditional uses in the CL Zone per Town Code §17.092.050(A), along with motels and hotels. A record search of the property files revealed that the only prior residential Conditional Use Permit applied is the manager's office living space at 12A, Building 12, issued by the Town in 2005.

Another source of complaints has been people loitering in the recessed alcoves behind suites 8D, 8B and 8A2. As can be seen currently, some tenants have attempted to combat this by enclosing the area with informal fences.

During recent inspections of the property prompted by fires occurring in building 6 and building 8, the Town determined that the fire locations, as well as a number of the other suites on the property, were being used for both living and commercial business purposes.

At that point staff advised the owner that if some of the suites were going to be used as live/work spaces, he would have to apply for, and be granted, a Conditional Use Permit by the Planning Commission, to legalize those uses. An inspection by staff of the property on June 19, 2019 revealed that 12 of the units were already being used as live/work units and one of the spaces was under construction being remodeled into a live/work space without a building permit.

## **DISCUSSION**

The applicant is proposing to legalize the 14 live/work spaces on the site, bringing them into compliance with current building and fire code requirements. The proposed project includes a 700 square-foot expansion of three of the suites in building 8, (8A2, 8B and 8D) and legalization and completion of a 5 foot metal fence located on top of the

existing wall resulting in a security fence/wall structure that varies in height from 7 feet 2 inches to 9 feet 4 inches feet along portions of the property street frontage.

The expansion encloses 3 partially enclosed areas where school children used to wait, out of inclement weather, for their classrooms to be opened. The area has presented a constant security problem for both the owner and the Fairfax Police Department providing partially hidden areas that back up to the ballfield. The areas tend to attract people who loiter and cause problems for tenants and people using the public path and bridge that accesses Peri Park and the Women's Club area. The enclosure additions would provide 233 additional square feet of area for the 3 units and decrease the attractiveness of the area as a location to hang out.

The purpose of the CL Zone District is to "provide a location for uses which may be incompatible with the high density characteristics of the Central Commercial CC Zone or which may have difficulty in finding a property location in the Highway Commercial CH Zone. The uses in the CL limited commercial zone are oriented to services rather than to the retail sale of commodities."

Town Code §17.092.050(A) allows residential uses in the CL Zone with a Conditional Use Permit issued by the Planning Commission and Town Code §17.092.050(E) gives the Planning Commission the authority to determine whether other uses not specifically listed in the conditional use section of the CL Zone chapter are equivalent to those listed. The section also allows the Commission to determine other uses to be equivalent to those listed in the permitted use section of the CL Zone but requiring regulations of location, extent or operation become of some unique characteristic.

Staff determined that the proposed live work spaces which combine permitted physical therapy and professional offices with the conditional residential uses require the approval of a Conditional Use Permit by the Planning Commission.

Issues that arise with live/work spaces typically include conflicts between residential and commercial uses, shortage of parking and/or traffic. Staff has analyzed these different issues with respect to the project and discusses them in this staff report.

The proposed live work spaces offer a variety of work space versus living space areas as follows:

	Building & Suite No.	Living Space Square-feet	Work Space Square-feet	Total Square-feet
1	Bldg. 6, Ste. 110 (1 <sup>st</sup> floor)	328	373	701
2	Bldg. 6, Ste. 270 (2 <sup>nd</sup> floor)	338	77	416
3	Bldg. 6, Ste. 280 (2 <sup>nd</sup> floor)	98	95	193
4	Bldg. 8, Ste. 8A2	374	299	673
5	Bldg. 8, Ste. 8B	436	254	690
6	Bldg. 8, Ste. 8D	501	613	1,114
7	Bldg. 10, Ste. 10C	476	442	918
8	Bldg. 10, Ste. 10D	397	98	495
9	Bldg. 10, Ste. 10 E	248	254	502
10	Bldg. 12, Ste. 12B-1	225	334	559
11	Bldg. 12, Ste. 12C-1	240	222	462
12	Bldg. 12, Ste. 12C-2	214	196	410
13	Bldg. 12, Ste. 12D-1	178	310	488
14	Bldg. 12, Ste. 12D-2	223	208	431

### Number of Residents and Ratio of Work Space to Living Space

A review of other jurisdictions with Live/work Housing has revealed that some of them include a 750 square-foot minimum size requirement for live-work housing (Novato, Larkspur). Most of the jurisdictions in the Bay Area that have adopted live/work codes do not require a minimum size beyond the State Housing Code minimum size limitation of 150 square-feet.

Most jurisdictions limit the location of the residential space with respect to the commercial space in the unit, allowing residential uses only at the rear of the work space and/or only on the second floor (San Rafael and Mill Valley). The location of living space in relation to the work space restrictions constitute good planning because most tenants would not want to have to escort a customer, IT repair person or delivery person through their private living spaces to the work area.

In a cursory review of other bay area communities that allow live work units, only Berkeley has a limitation on the proportion of the unit's living space area to its commercial area, stipulating that only 40% of the live/work space square footage can be used for residential. This limitation was included because Berkeley wanted, " to permit Live/Work Units that function predominately as workspaces and secondarily as residences" and "To assure that the division of space between living and working space within these units reflects the priority of workspace" [Berkeley Municipal Code § 23E.20.020(G and (H))].

More generally, the International Property Management Code requires that bedrooms provide at least 70 square feet for a bedroom occupied by at least one person and that

50 square feet per person be provided for bedrooms accommodating more than 1 person. If a room is to be used as both a workspace and a bedroom, the bedroom square footage must be at least 70 square feet. Compliance by the property owner with the International Property Management Code will limit the number of persons that will be able to dwell in the live work spaces to the following:

	Suite #	# of bedrooms	Bedroom(s) sq. ft.	# Persons allowed per IPMC
1	Bldg. 6, Ste. 110 (1 <sup>st</sup> floor)	1	99	1
2	Bldg. 6, Ste. 270 (2 <sup>nd</sup> floor)	1	80	1
3	Bldg. 6, Ste. 280 (2 <sup>nd</sup> floor)	2	80, 144	2
4	Bldg. 8, Ste. 8A2	1	231	4
5	Bldg. 8, Ste. 8B	1	254	5
6	Bldg. 8, Ste. 8D	1	231	3
7	Bldg. 10, Ste. 10C	3	110, 90, 90	4
8	Bldg. 10, Ste. 10D	2	117, 140	4
9	Bldg. 10, Ste. 10 E	1	110	2
10	Bldg. 12, Ste. 12B-1	1	95	1
11	Bldg. 12, Ste. 12C-1	1	90	1
12	Bldg. 12, Ste. 12C-2	1	90	1
13	Bldg. 12, Ste. 12D-1	1	91	1
14	Bldg. 12, Ste. 12D-2	1	132	2

Note: IPMC = International Property Management Code

Staff is not concerned about the ratio of work space to living space because with many new jobs being done remotely via the internet, many businesses only need a small space to accommodate an office operated by one person.

Staff is concerned about the possibility that the spaces may become strictly residential, losing the commercial component that is required to maintain the live/work status of the units and no longer maintaining consistency with the service commercial character of the zoning CL district.

Other communities have included in their live work ordinances, the following conditions to assist them in maintaining their live work spaces (adapted for potential applicability to School Street Plaza):

1. Live/work quarters shall be occupied and used only by a business operator, or a family of which at least one member shall be the business operator.

2. The living portion of the unit shall be incidental to the workspace and the live/work space shall be maintained and classified as a business use. There shall be an interior connection between the live and work portions of the unit.
3. The workspace must meet the requirements of the building and fire code for the types of activity/use being undertaken.
4. The permitted work activities shall be in accordance with those permitted by the Limited Commercial CL Zone regulations.
5. Leases for the live work spaces must include the following: "As the occupant of a live/work space, by selecting this type of occupancy, I accept the conditions found in the area including but not limited to, commercial noise, pollution, fumes, dirt, traffic and odors to the extent that they are permitted by law in the CL Zone district".
6. There shall be no storage of flammable liquids or hazardous materials beyond that normally associated with a residence use. Storage of flammable liquids and hazardous materials beyond that normally associated with a residential use, such as for an artist studio, shall only be allowed through prior written modification of this use permit and approval from the Ross Valley Fire Inspector and Fairfax Building Inspector.
7. The living space may not be rented or sub-let separately from the work space.
8. There shall be no signs or advertising in conjunction with a live/work facility, except for a 2 square-foot sign for each business attached to the door, window or exterior wall of that business.
9. An adequate refuse storage area shall be provided for all the commercial and live/work spaces in the School Street Plaza complex.
10. All exterior lighting shall be sufficient to establish a sense of well-being to the pedestrian and one that is sufficient to facilitate recognition of persons at a reasonable distance. Type and placement of any new lighting to meet this condition shall be to the satisfaction of the Planning Director and Building Official. A minimum lumen level of one foot-candle at ground level shall be provided in all exterior doorways, pedestrian travel pathways, stairways and vehicle parking areas. (Staff will include the following in the resolution should the project be approved: An exterior lighting plan shall be submitted with the building permit application and any new external lighting shall use dark sky compliant fixtures and shall be approved by the Planning Director and Building Official prior to issuance of the building permit. The plan shall limit light-spillage beyond the areas necessary to light the rear deck, and shall avoid direct offsite illumination).

11. The residential use of the live/work spaces shall not interrupt or modify the external appearance of the commercial building frontage (i.e. no storage of barbecue, lounge chairs, excessive plantings in pots out-side the buildings).
12. The commercial and residential components shall be restricted to the live/work units and shall not be conducted in the walkways, rear yard area or parking lot of school street plaza.
13. The commercial and residential components of the live/work spaces as designated on the floor plans approved through this use permit shall remain as depicted in the plans dated 8/12/19 labeled "School House Plaza: Live Work Spaces".
14. The residential and commercial components shall remain residential and commercial and cannot be converted to an all residential or all commercial use without the approval of a modification of this use permit by the Planning Commission.
15. No more than one employee excluding residents of the dwelling unit shall work or report to work on the premises.
16. The commercial uses operating from the live/work spaces shall only be permitted uses in the CL Zone and shall not generate external noise, odor, flare, vibration or electrical interference detectible to normal sensory perception by adjacent neighbors.
17. Prohibited uses in the live/work spaces are retail sales of food and/or beverages (does not include internet sales, mail order or off site catering), entertainment, drinking and public eating establishments, veterinary services including grooming and boarding or care of animals for hire or sale, businesses that involve the use of prescription drugs, adult only businesses and the sales and repair of vehicles including bikes, automobiles, boats, motorcycles, aircraft, trucks or recreational vehicles.

Staff believes that with incorporation of all of the above as project conditions, the live/work spaces can be kept in compliance with the Conditional Use Permit, and conflicts between the live/work spaces and the strictly commercial spaces will be minimized. Staff has included them as conditions of approval in the attached draft Resolution No. 2019-17 recommending approval of the proposed Conditional Use Permit.

The School Street site is zoned for commercial use. In order to retain the primarily commercial use of the property, staff has included in the resolution recommending approval of this Conditional Use Permit the condition that no live work bedroom exceed the maximum number of persons allowed in the IPMC and that bedrooms exceeding



100 square feet be limited to 3 adults or 2 adults and one child. This would allow the live work spaces to provide residences for up to 32 people, while not significantly increasing the amount of traffic accessing the site beyond what exists now.

The building code allows residential units to share bathrooms as long as the number of units sharing a bathroom does not exceed 4 units. The application proposes to have suites 270 and 280 on the second floor of building 6 share a bathroom. The bathroom would be created by expanding one of the upstairs ½ bathrooms into a full bath through the expansion of the bathroom into what is currently a utility closet to provide a shower.

The application has labeled some of the rooms behind the work spaces as living and/or dining rooms in a number of units. Staff is considering those rooms bedrooms because there really is no way to ensure that the rooms are not used for bedrooms. These rooms must be provided with exits that conform to building and fire codes for bedrooms, to ensure that persons that might choose to sleep in these rooms can escape in the case of an emergency. The Town should not simply rely on stated or even written intentions of the property owner and/or the tenants that they will not sleep in these rooms as an adequate safety precaution, especially in light of the willful violations that led to the Ghost Ship fire and that have occurred on the project site in the past. If a room is separated from the other available exits by a wall and door, it must be provided with operable windows that open to provide an escape route (per the Town of Fairfax Building Official).

### **Parking and Traffic**

The proposed 700 square-foot expansion increases the required number of parking spaces for the commercial complex from 42 to 43, and 62 spaces are provided.

The complex was constructed with 62 parking spaces, exceeding the minimum required 42 on-site parking spaces by 20 spaces.

Staff has conferred with the Town Traffic Engineer who has verified that per their calculations based on the conversion of 7,351 square-feet of commercial space to live/work and the 700 square-foot expansion of 3 of the live/work units and the remaining 12,067 square-feet of service commercial, the average daily traffic (ADT) generated by the School Street Plaza should actually decrease by 82 trips. Therefore, conversion of the proposed units to live/work spaces will not increase the traffic to the site beyond that which would occur if the spaces remained fully commercial, and should not require the provision of additional parking or the issuance of a Traffic Impact Permit per Town Code § 17.056.050(A)(1).

For a complete list of the existing businesses currently operating from the School Street Plaza see Attachment B.

## Design Review

The design of the building to be altered is a typical “California public school building” design with not much articulation except for doors and windows with a flat roofline. The building matches the architecture of the other old school building on the site. The façade of the buildings that face the parking lot has been softened through the erection of vine covered trellis structures. The approximately 700 square-foot addition is proposed at the rear of suites 8A2, 8B and 8D in building 8, where the proposal is to enclose three sheltered recessed areas where staff presumes that school children formerly used in inclement weather. The addition has been designed to match the exterior of the existing building both with minor changes in the numbers and size of window, and relocation of the 3 rear doors accessing the spaces.

The siding for the new additions will be board and batten painted grey (Sherwin Williams, Knitting Needles, SW7672), the doors and door trim will be blue (Sherwin Williams, Poolhouse, SW7603, the window trim will be a tan color (Jeld Wen windows, Desert Sand, vinyl or fiberglass) and the safety fence along Broadway and Merwin Avenue fence will be open, with square metal posts painted in semi-gloss black paint (Sherwin Williams, Black of Night, SW 6993).

The area of the addition is not adjacent to any residential structures, it faces the ball field and Pavilion and the new walls will match the existing building construction and color. No new exterior lighting is proposed at this time and any future changes to the exterior lighting will have to comply with the following which staff has included as a condition of the project approval:

An exterior lighting plan showing existing and proposed lighting locations and fixtures shall be submitted with the building permit application and any new external lighting shall use dark sky compliant fixtures and shall be approved by the Planning Director prior to issuance of the building permit. The plan shall limit light-spillage beyond the areas necessary to light the entryways travel paths, stairways and parking lot and shall avoid direct offsite illumination.

The proposed project design complies with the design review criteria set forth in Town Council §17.020.040.

### 2010-2030 Fairfax General Plan Compliance

The proposed conversion of 14 of the suites at School Street Plaza into live/work spaces complies with the Fairfax General Plan policies and programs as follows:

LU-7.1.3: A combination of commercial and residential land uses that are consistent with established building height limits should be encouraged on the same parcel.

LU-8.1.1: The Town of Fairfax shall facilitate the development of key housing opportunity sites to provide for the development of affordable housing as identified in the Housing Element

LU-8.1.1.5: Change the zoning designation for the School Street Plaza area from Limited Commercial to Planned District Development; thereby making it possible to accommodate a mix of uses including housing and/or a new school at the site.

C-6.3.2: Promote mixed-use development to provide housing and commercial services near employment centers, thereby reducing the necessity of driving.

H-4.1.1.1: Rezone School Street Plaza from CL to PDD thereby making it possible to accommodate at least 9 units of housing.

H-4.1.1.3: Acceptance of Live/Work Development. Town Staff will prepare, for consideration and approval by the Planning Commission and Town Council, flexible standards that provide opportunities for live/work developments, where housing can be provided for workers on-site and/or caretaker or other types of housing can be provided. Revise the Town Zoning Ordinance.

The site is identified as an opportunity site with potential for low-income or affordable housing in-fill development in the 2010-2030 Fairfax General Plan. The adopted 2015-2023 Fairfax Housing Element proposes rezoning the site to Planned Development PDD District allowing at least 9 units of low income or affordable residential units and the proposed 14 live/work spaces would make progress towards this goal, even without the anticipated Zoning Change to Planned Development District.

### **Fence Height Variance**

The applicant was stopped by the Building Official while in the process of erecting a 5 foot tall black metal fence along the top of portions of the rock wall that runs along the Broadway and Merwin Avenue frontage of the property.

Several different sections of the Zoning Ordinance govern any fence placed on the project site. Town Code 17.040.020 requires that the structures on corner parcels maintain a setback from any street frontage of 10 feet but Town Code §17.044.080(B)(1) allows 4 foot fences and retaining walls within the 10 foot setback. Town Code §17.008.020, Definition of Structure, includes fences as structures.

The Town has historically measured the height of a fence or a combined fence/retaining wall structure such as the one being proposed, from the side of the fence/wall facing the lowest finished grade to the top of the fence/wall because that is the side where the fence structure will have the greatest visual impact/solar impact. Therefore, the combination fence/rock wall structure being proposed by the applicant along Broadway will be approximately 7 ft. 8 in. in height above the sidewalk grade with the rock wall being 2 feet 8 inches in height and the metal fence another 5 feet on top of the wall.

The existing retaining wall along Merwin varies in height from 2 ft. 6 in. to 5 ft. 9 in. The metal fence proposed along this side of the site would be 2 ft. 9 in. on top of the wall

that will result in a fence/wall structure that varies in height from 5 ft. 3 in. to 8 ft. 6 in. in height.

The applicant has indicated in his written supplemental information that the purpose of these tall combination fence/retaining walls is to stop people from jumping off the walls and has indicated that the fence/walls were recommended by his insurance company.

The site has been used for many years, first as a school and then as commercial space, and the Town does not have any records of people being injured in conjunction with jumping or falling off the wall. It is possible that the act of blocking the stairs leading from the parking lot down to the public sidewalk at the corner of Merwin Avenue and Broadway has resulted in people trying to shortcut their travel paths to reach the public sidewalk by cutting through the landscaped areas and jumping from the wall to the public sidewalk. The owner advised staff that he was forced to fence the stairs because people were hanging out there and smoking, drinking and dumping garbage and old household goods on the stairway. A well placed security camera might allow the fences to be removed from the stairway area eliminating the need for people to cut through the landscaped areas to reach the public sidewalk as well as discouraging people from hanging out on the stairs or using them to dump unwanted items.

Staff believes that there are adequate landscaping areas to the rear of the proposed fence/wall locations the 5 ft. tall fence could be constructed and/or be relocated to 3 feet back from the top of the retaining wall. A landscaped bed between the fence and the wall would stop people from jumping off the walls just as well as the larger combined fence/wall structure and it would be visually much more appealing.

The fence is metal with large spacing between the metal slats so the fence does not present a solid face towards the street which helps soften the visual impact of the combined fence/wall structure. Staff does not believe that this factor alone is enough to enable the Commission to make all the required findings for approval of a fence height variance for a fence reaching 10 ft. 9 in. in height.

In order to approve a fence/retaining wall height variance the Planning Commission needs to be able to make the following legal findings:

Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.

The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.

The strict application of this title would result in excessive or unreasonable hardship.

The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

Staff believes that granting a height variance to allow a 7 ft. 6 in. to 10 ft. 9 in. combined fence/wall structure would be grant of special privilege especially since the goal to keep people from jumping off the rock and concrete walls can be accomplished in a more visually appealing and just as effective way with a 5 foot tall fence, set back at least 3 feet from the walls with landscaping in between. Therefore, we are recommending approval of a fence height variance for a 5 foot tall wall, setback a minimum of 3 feet from the existing walls with irrigated landscaping between the fence and the wall structures.

### **Other Agency/Department Comments/Conditions**

#### **Ross Valley Fire**

RVFD submitted written requirements which have been incorporated into conditions of approval in the attached resolution and are summarized as follows:

- A fire sprinkler system is required throughout the entire building which complies with the requirements of the National Fire protection Association standards 13 and 72, California Fire Code, Chapter 9, 2016 edition and local standards and the system must be U.L. certified and be monitored by a U.L. listed Fire Alarm monitoring company, smoke and carbon monoxide detectors shall be located in each live/work unit in compliance with the building code and the smoke detectors shall be provided with AC power and be interconnected, address numbers at least 4" tall shall be in place adjacent to each front door and be lighted in a manner acceptable to the Ross Valley Fire Department, separation of not less than 1 hour shall be provided between live/work suites and adjacent live/work or commercial suites.

#### **Fairfax Building Department**

Egress windows must be installed in all back rooms of suites 10C, 10D and 10E.

#### **Marin Municipal Water District, Ross Valley Sanitary District, Fairfax Police Department and Fairfax Public Works Department.**

No comments were received from the Marin Municipal Water District, Ross Valley Sanitary District, the Fairfax Police Department or the Fairfax Public Works Department.

### **RECOMMENDATION**

1. Conduct the public hearing.
2. Move to approve application # 19-04 by adopting Resolution No. 2019-17, approving the proposed expansion, the conversion of 14 suites to live/work spaces, a modified fence design and setting forth the findings and the conditions for the project approval.

## **ATTACHMENTS**

Attachment A - Resolution No. 2019-17

Attachment B – applicant’s supplemental information

Attachment C – list of current tenants

## RESOLUTION NO. 2019-17

**A Resolution of the Fairfax Planning Commission Approving Application # 19-14 for a Conditional Use Permit, Design Review Permit and a Retaining Wall Height Variance for 14 Live/Work Units, A 700 Square-foot Expansion of 8 School Street Plaza and for 5 Foot Tall Fence Set Back from the Existing Wall Along Broadway and Merwin Avenue at School Street Plaza, 6, 8, 10 and 12 School Street.**

**WHEREAS**, the Town of Fairfax has received an application for Use Permit for 14 live/work units, a Design Review Permit for a 700 square foot addition to building 8 and a fence height variance for a 7 ft. 4 in. to 10 ft. 9 in. combination fence/retaining wall structure along Broadway and Merwin Avenue; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on October 17, 2019 at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Conditional Use Permit, Design Review Permit and a modified Fence Height Variance for at 5 foot metal fence; and

**WHEREAS**, based on the plans and supplemental information provided by the applicant, as well as the testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary Use Permit, Design Review Permit and Fence Height Variance for a 5 foot tall fence; and

**WHEREAS**, the Commission has made the following findings

**The proposal complies with the Fairfax General Plan Policies and Programs as follows:**

LU-7.1.3: A combination of commercial and residential land uses that are consistent with established building height limits should be encouraged on the same parcel.

LU-8.1.1: The Town of Fairfax shall facilitate the development of key housing opportunity sites to provide for the development of affordable housing as identified in the Housing Element

LU-8.1.1.5: Change the zoning designation for the School Street Plaza area from Limited Commercial to Planned District Development; thereby making it possible to accommodate a mix of uses including housing and/or a new school at the site.

C-6.3.2: Promote mixed-use development to provide housing and commercial services near employment centers, thereby reducing the necessity of driving.

H-4.1.1.1: Rezone School Street Plaza from CL to PDD thereby making it possible to accommodate at least 9 units of housing.

H-4.1.1.3: Acceptance of Live/Work Development. Town Staff will prepare, for consideration and approval by the Planning Commission and Town Council, flexible standards that provide opportunities for live/work developments, where housing can be provided for workers on-site and/or caretaker or other types of housing can be provided. Revise the Town Zoning Ordinance.

### **Use Permit Findings**

The approval of the Conditional Use Permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment as long as the conditions of approval that follow in this resolution are complied with.

The development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in the 2010-2030 Fairfax General Plan and Title 17 of the Fairfax Town Code, Zoning.

All of the live/work spaces are already occupied, except one that is under construction, and operating as live/work commercial spaces with live-in tenants. Therefore, approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

### **Fence Height Variance Findings**

The much higher elevation of the developed portion of the site from the public roadway and pedestrian sidewalks is the special circumstance that warrants the approval of a fence height variance for a 5 foot tall fence set back at a minimum of 3 feet from the retaining wall that enclosed the site along its Broadway and Merwin Avenue property lines.

The variance or adjustment will not constitute a grant of special privilege because fence height variances have been granted on other corner lots and the 1 foot height increase above the 4 foot fence height that is allowed, due to the slope of the site in the area of the fence is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.

The strict application of this title would result in excessive or unreasonable hardship.

The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

### **Design Review Finding**



The project, redesigned with a 5 foot fence set back a minimum of 3 feet from the existing wall complies with the design review criteria. (Town Code § 17.020.040).

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

1. The project is limited to the development depicted in the plans dated 8/12 19 pages A0 through A3, with the fence redesigned setback from the existing wall a minimum of 3 feet with the separating area landscaped and irrigated.
2. If it is determined that any lighting beyond that which exists on the site now is required to meet building code/safety requirements a final exterior lighting plan shall be submitted with the building permit application and shall be approved by the Planning Director prior to issuance of the building permit, shall be dark-sky compliant and shall limit light-spillage beyond the areas necessary to light access pathways and the outdoor patio, and shall avoid direct offsite illumination.
3. The applicant shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
4. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
5. Any other changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc, shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Planning Commission or Planning Director as required.
6. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating

in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly.

7. The project final inspection and issuance of the occupancy permit shall not occur until all the building, fencing and landscaping are completed and approvals have been received from all agencies and departments with jurisdiction over the project.
8. There shall be no storage of any materials, supplies for the business outside the building.
9. Failure to comply with the conditions for modified Use Permit # 19-14 as herein enumerated, may result in revocation or modification of the Conditional Use Permit by the Planning Commission, in accordance with Chapter 17.024 of the Fairfax Town Code (section 17.024.090, grounds for revocation and 17.024.100, grounds for modification).
10. Any equipment installed on the either the roof or exterior of the building must be screened from public view.
11. Live/work quarters shall be occupied and used only by a business operator, or a family of which at least one member shall be the business operator.
12. The living portion of the unit shall be incidental to the workspace and the live/work space shall be maintained and classified as a business use. There shall be an interior connection between the live and work portions of the unit.
13. The workspace must meet the requirements of the building and fire code for the types of activity/use being undertaken.
14. The permitted work activities shall be in accordance with those permitted by the Limited Commercial CL Zone regulations.
15. Leases for the live work spaces must include the following:

"As the occupant of a live/work space, by selecting this type of occupancy, I accept the conditions found in the area including but not limited to, commercial noise, pollution, fumes, dirt, traffic and odors to the extent that they are permitted by law in the CL Zone district".

16. There shall be no storage of flammable liquids or hazardous materials beyond that normally associated with a residence use. Storage of flammable liquids and hazardous materials beyond that normally associated with a residential use, such as for an artist studio, shall be allowed only through a modification of this use permit and approval from

the Ross Valley Fire Inspector and Fairfax Building Inspector.

17. The living space may not be rented or sub-let separately from the work space.
18. There shall be no signs or advertising in conjunction with a live/work facility, except for a 2 square-foot sign for each business attached to the door, window or exterior wall of that business.
19. An adequate refuse storage area shall be provided for all the commercial and live/work spaces in the School Street Plaza complex.
20. All exterior lighting shall be sufficient to establish a sense of well-being to the pedestrian and one that is sufficient to facilitate recognition of persons at a reasonable distance. Type and placement of any new lighting to meet this condition shall be to the satisfaction of the Planning Director and Building Official. A minimum of one foot-candle at ground level shall be provided in all exterior doorways, pedestrian travel pathways, stairways and vehicle parking areas. An exterior lighting plan shall be submitted with the building permit application and any new external lighting shall use dark sky compliant fixtures and shall be approved by the Planning Director and Building Official prior to issuance of the building permit. The plan shall limit light-spillage beyond the areas necessary to light the rear deck, and shall avoid direct offsite illumination.
21. The residential use of the live/work spaces shall not interrupt or modify the external appearance of the commercial building frontage (i.e. no storage of barbecue, lounge chairs, excessive plantings in pots out-side the buildings).
22. The commercial and residential components shall be restricted to the live/work units and shall not be conducted in the walkways, rear yard area or parking lot of school street plaza.
23. The commercial and residential components of the live/work spaces as designated on the floor plans approved through this use permit shall remain as depicted in the plans dated 8/12/19 labeled "School House Plaza: Live Work Spaces".
24. The residential and commercial components shall remain residential and commercial and cannot be converted to an all residential or all commercial use without the approval of a modification of this use permit by the Planning Commission.
25. No more than one employee excluding residents of the dwelling unit shall work or report to work on the premises.
26. The commercial uses operating from the live/work spaces shall only be permitted uses in the CL Zone and shall not general external noise, odor, flare, vibration or electrical interference detectible to the normal sensory perception by adjacent neighbors.
27. Prohibited uses in the live/work spaces are retail sales of food and/or beverages (does

not include internet sales, mail order or off site catering), entertainment, drinking and public eating establishments, veterinary services including grooming and boarding or care of animals for hire or sale, businesses that involve the use of prescription drugs, adult only businesses and the sales and repair of vehicles including bikes, automobiles, boats, motorcycles, aircraft, trucks or recreational vehicles.

28. A landscaping and irrigation bond/letter of credit shall be submitted with the building permit application which shall be held for 18 months after the fence, landscaping and irrigation is installed and approved by the Town to ensure the landscaping is established.
29. No live work bedroom exceed the maximum number of persons allowed in the IPMC and that bedrooms exceeding 100 square feet be limited to 3 adults or 2 adults and one child. This would allow the live work spaces to provide residences for up to 32 people, while not significantly increasing the amount of traffic accessing the site beyond what exists now.

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

The approval of the Use Permit can occur without causing significant impacts on neighboring businesses or residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on October 17, 2019, by the following vote:

AYES:

NOES:

ABSTAIN:

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Chair Swift

Attest:

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Ben Berto, Director of Planning and Building Services

PROJECT DESCRIPTION: installing Rod Iron Fence Total of ± 200'  
as Safety Fence To stop people jump over the wall  
and getting injured.

it is Safety fence Recommended by  
the insurance Co.

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size ± 1.92 ACRES.	1.74 ACRES	Same
Size of structure(s) or commercial space (square feet)	± 200' fence at 3 Location	
Height and No. of stories	N/A	
Lot coverage	✓	
No. of dwellings units	✓	
Parking <sup>1</sup> No. of spaces	✓	
Size of spaces	✓	

Amount of proposed excavation and fill	Excavation = N/A	Fill = N/A
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Estimated cost of construction \$ ± 6000.-

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

<sup>1</sup>Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? NO

F. Egan  
 Signature of Property Owner

3/18/19  
 Date

F. Egan  
 Signature of Applicant

3/18/19  
 Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-1584

Variance - Additional information required.

- Include a cross section through the proposed project depicting the project and the relationship of the proposal to existing features and improvements on adjacent properties.
- Lot coverage calculation including all structures and raised wooden decks.

In order to approve your project, the Planning Commission must make findings of fact which state that 1) there is a special feature of the site (such as size, shape or slope) which justifies an exception; 2) that the variance is consistent with the treatment of other property in the neighborhood; 3) that strict enforcement of the ordinance would cause a hardship; and 4) that the project is in the general public interest.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

*Some people jumping over the wall going from  
park lot to out side of \_\_\_\_\_  
The fence will be put in as safety need to prevent  
any injuries.*  
**safety Fence**

### Use Permit Applications - Additional information required.

- A written description of the proposed use, major activities, hours of operation, number of employees on the premises during the busiest shift and when the busiest shift is expected and other information pertinent to the application.
- Floor plans must include location of any special equipment.
- Designate customer, employee and living areas.
- If different uses are included in this activity, for example storage, retail, living space, etc. Indicate square footage of each proposed use.

In order to approve your project, the Planning Commission must make findings of fact which state that the project will not have a negative impact on the general public welfare, conforms with the policies of the Town, does not create excessive physical or economic impacts on adjacent property and provides for equal treatment with similar properties in Town.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

installing fence intended to prevent injuries.  
(SAFETY Need)

# Attachment A: School Street Plaza Table of Tenants as of August 13, 2019

SEP 27 2019

Building	Suite	Business Name	Description of Services	Products sold on site	Open to public?	Hours	Type of business/use	Requested Planning Action	Section - This Application
6	100	noticed for service (leak)					Professional office	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	110	Barbara Swift Brauer	Creative writing	None	Private	-	Professional office		
	130	Dan Clark, ESQ.	Attorney - Tax	None	Private	-	Professional office		
	140	Dandelion Vitali Salon	Cosmetologist	None	No walk in	by appl	Professional salon		
	150	vacant					...art... studios		
	160	vacant					Professional office		
	170	EduTracks	Financial Advisory - Sustainability	None	Private	-	Professional office		
	180	Ceniarth, LLC.	Foundation	None	Private	-	Professional office		
	200	Main Alliance	Medical cannabis dispensary	Cannabis	Yes	10AM-8PM	Professional office CUP (1996)		
	210	Main Alliance							
	220	vacant							
	8	230	PFAFWilson - Boucher	CPA	None	Private	by appl	Professional office	
240		Inner Nature Sanctuary	Physical Therapy	None	No walk in	by appl	Professional office		
250		David Mirzrah	Financial Advisory	None	Private	-	Clinics...therapy		
260		Vida Nature	Admin Office - Nature School	None	Private	-	Professional office		
270		A & G Studios	Music Studio	None	Private	by appl	Music... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
280		Birgit's Boats	Interior Designer - Boating	None	Private	by appl	Professional office	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
A1		Morgan Hall Architect	Architect	None	No walk in	by appl	Professional office		
A2		vacant					Music... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
B1		Lotus Hand Healing Arts	Nutritionist	None	Private	by appl	Clinics...therapy		
B2		vacant					Clinics...therapy	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
C		Tom Finch Studios	Music Studio	None	No walk in	by appl	Music... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
D		Soundwire Studios	Music Studio	None	No walk in	by appl	Music... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
10	A	Frogs	Physical Therapy - Water	None	Yes	11A-midnight	Clinics...therapy		
	B	Frogs							
	C	Melaine	Music Studio	None	No walk in	by appl	Music... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	D	Laura Bedford Studios	Music Studio	None	Private	by appl	Music... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	E	Guerilla Marketing	Financial Advisory - Marketing	None	Private	-	Office, Financial	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	A	Resident Manager	NA	None		NA	CUP #05-43		
	B1	Studio Elsewhere	Art Studio	None	Private	-	...art... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	B2	Vaska by Amica	Design Studio - Fashion art	None	Private	-	...art... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	C1	Earth Spa	Physical Therapy	None	No walk in	by appl	Clinics...therapy	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	G2	Beautyweaving	Art Studio	None	No walk in	by appl	...art... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	D1	Earth Goddess	Music/Dance Studio	None	No walk in	by appl	Music... studios	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
	D2	vacant					Clinics...therapy	CUP Work Live/Live Work	17.092.050(A) & 17.092.060(A)(3)
E	Sol Studios	Yoga/Dance Studio	None	No walk in	9AM-7PM	...dance... studios			

**Section, Quick Reference** (BOLD typeface is part of this application request)  
 Conditional uses 17.092.050(A) Malls and Hotels, residential uses  
 Accessory uses 17.092.060(3) Offices for principal uses