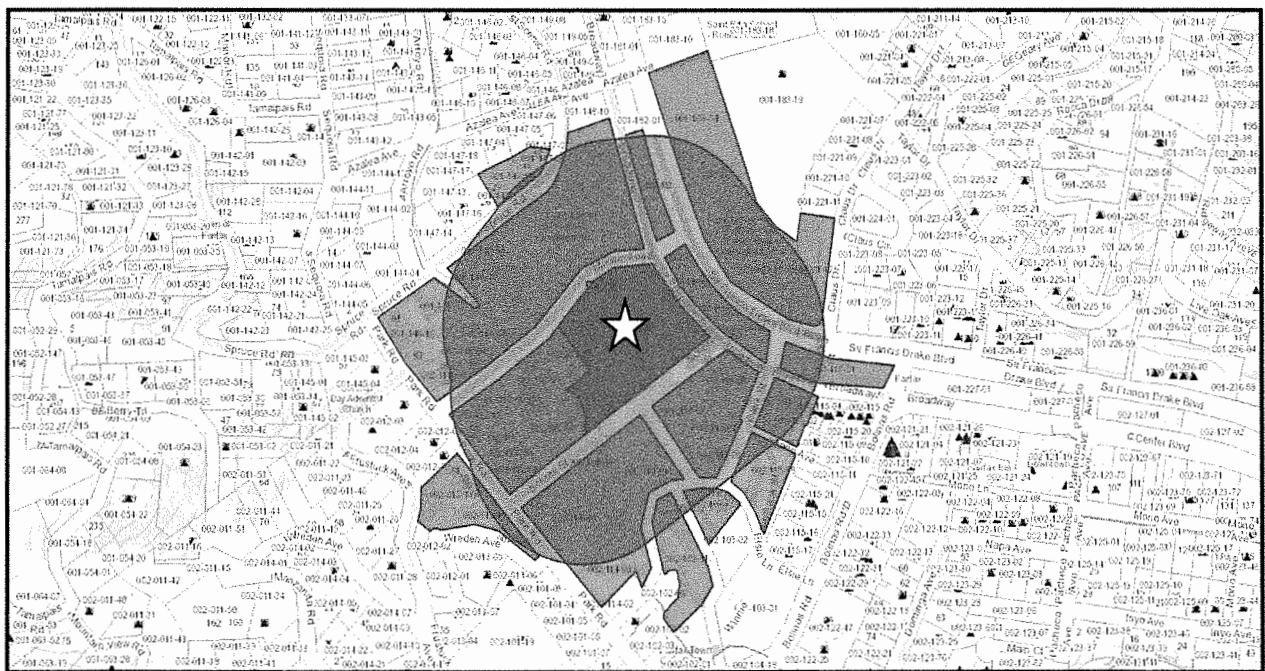


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: January 16, 2020
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 STREE 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

This item was continued from the October 17, 2019 and December 19th, 2019 Planning Commission meetings. At the December meeting the Planning Commission raised a number of issues and questions and asked if the applicant was willing to agree to a continuance and waiver of the Permit Streamlining Act processing time limits, to allow additional time to address those issues and questions, including those raised by the applicant, before taking action on the project.

The applicant did not agree to the continuance. The Planning Commission then gave their preliminary intent to deny the project. The Commission's action on the project would not be final until the Commission acts on a resolution denying the project. That action could take place at the January 16, 2020 meeting without reopening the public hearing. The Commission could continue the project, including reopening the hearing, if the applicant mutually agreed with the Town to waive the Permit Streamlining Time limits for up to an additional 90 days.

For further information on the project review the October and December staff reports which can be found on-line at the Town website at www.townoffairfax.org.

DISCUSSION

Subsequent to the December Commission hearing, the Town has determined that because there is no inclusionary "affordable" housing ordinance in the Town Code, the Commission cannot require a housing applicant to provide affordable units. The applicant can voluntarily agree to provide low income units.

The applicant has agreed to a waiver and the extension of the project review period, (Attachment A) and staff is recommending that the Commission mutually agree to the continuance for up to 90 days. Staff and the applicant preliminarily intend to return with this project at the February 20, 2020 meeting, responding to the issues and questions raised at the December hearing.

Consistent with the preliminary direction given by the Commission at the December meeting, staff has attached Resolution No. 2010-17 denying the application, with the list of additional information that had been requested by the Planning Commission, should the Commission not wish to agree to the recommended continuance (Attachment B).

RECOMMENDATION

Continue review of Application 19-15 to the February 20, 2020 meeting.

Alternative Recommendation

Deny the project by adopting Resolution No. 2020-17 denying the request Use Permit

and Design Review for live-work units and an expansion at School Street Plaza.

ATTACHMENT

Attachment A – Continuation Agreement

Attachment B - Resolution No. 2019-17

January 10, 2020

Fred Ezazi
P.O. Box 1355
Alamo, CA. 94507

Re: Extension of Time to Process Planning Application No. 19-15

Dear Mr. Ezazi:

This letter follows our discussion regarding the status of your Planning Application No. 19-15 on file with the Town of Fairfax for a Conditional Use Permit and Design Review Permit for live work units at School Street Plaza. It is our understanding that you are amenable to extending the amount of time in which the Town has to process this application under the Permit Streamlining Act for an additional ninety (90) days. If this is correct, please indicate your agreement by signing below and returning a signed copy of this letter to the Town. If I am mistaken, please contact me at your earliest convenience so that we can process your application accordingly.

Sincerely,



Linda Neal
Principal Planner

I, Fred Ezazi, am the applicant with respect to Planning Application No. 19015. By my signature below, I agree to a one-time, ninety (90) day extension of time for the Town of Fairfax to process said application. I understand that I am not required to consent to this extension, but I do so voluntarily.

F. Ezazi
Owner

1/10/20
Date

Owner

Date

RESOLUTION 2019-17

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX
DENYING APPLICATION NO. 19-15 FOR EXPANSION/CONVERSION OF 15
COMMERCIAL UNITS AT SCHOOL STREE PLAZA (APN 002-112-13) INTO
LIVE/WORK SPACES**

WHEREAS, on April 17, 2019, Fred Ezazi ("Applicant") submitted an application which was deemed complete on October 2, 2019, for a conditional use permit and fence height variance to the Town of Fairfax for the proposed legalization and/or conversion of 14 commercial spaces to live-work units (the "Project") at 6, 8, 10 and 12 School Street Plaza (the "Site") and for a 5 ft. 3 in. to 8 ft. 6 in. foot tall perimeter combination wall/fence; and

WHEREAS, on October 17, 2019, the Town of Fairfax Planning Commission held a duly noticed public hearing to consider approval of the Applicant's requested use permit and fence height variance; and

WHEREAS, at the conclusion of the October 17, 2019 Planning Commission meeting, that body did continue the application requesting additional information and plans from the applicant; and

WHEREAS, subsequent to the October 17, 2019 hearing the applicant provided some of the requested information, and, after being advised by staff that further research of the building code revealed that the 2 units proposed in building 6 would not comply with the building code, revised the plans as follows:

Building 8 was proposed for further expansion to relocate the 2 units currently existing in building 6 into building 8, an additional unit was added to building 12 increasing the number of total proposed live-work spaces from 14 to 15 (the revised "Project"), and the fence height variance was withdrawn.

WHEREAS, a second duly noticed public hearing to consider the revised application was held on December 19, 2019, where the Commission considered a staff report and the attached exhibits, and heard from the Applicant and his representative, interested members of the public and staff, and after doing so, determined that they needed additional information on the revised submittal from both the applicant and the staff; and

WHEREAS, at which time the Planning Commission asked the applicant whether he was willing to agree to a mutual extension of time under the Permit Streamlining Act for additional information to be provided. The additional information was determined through the public hearing discussion to be as follows:

1. A lighting plan of the exterior spaces showing existing and proposed fixtures sufficient to provide pedestrian safety without excessive illumination. A

minimum candle distance at ground level was to be provided in all exterior doorways, pedestrian travel pathways, stairways and vehicle parking areas and was to use dark sky compliant fixtures and avoiding direct offsite illumination while also limiting light-spillage beyond areas necessary for safe circulation throughout the commercial complex.

2. Revision of the site plan to show all structures and outdoor improvements on the site including the trellis structures, patio areas and other exterior areas used for other than parking, and the location of the garbage and recycling containers.
3. More information on how having deed restricted units would impact the owner's property rights, land value upon resale, the tenants receiving the benefit of the deed restricted units (annual income verification process), and the Town.
4. Reopening the original school stairway that leads from the corner of the intersection of Broadway and Merwin Avenue, which has been closed off by the applicant in response to undesirable activity.
5. Whether the 15 live-work units on the site, 42% of commercial center, which the 2010-2030 Fairfax General Plan identifies as appropriate for 9 residential units, is excessive for the site.
6. Whether allowing the ratio of living space to commercial space should be allowed to be 50/50 or whether the ratio should be adjusted.
7. Whether some of the bathrooms in the units could be redesigned or relocated so that the bathrooms do not open directly into the kitchen/food preparation areas.
8. More design work on the additions to building 8, with additional articulation and/or visual contrast integrated into the design of the sides of the building that will face the parking lot and the ball field where the new additions are proposed before the Commission can affirmatively determine that the design complies with the design review criteria contained in Town Code 17.020.040.
9. Clarity on the number of persons the units will accommodate per the building and property management codes, not just the number of persons the owner indicates will be living in the units.
10. HVAC plans and more information on the visual impacts of the installations on the buildings, including screening, with elevations.

11. Information on whether the units contain asbestos or lead paint and protocols on how to ensure public safety.
12. Plans clearly indicating which improvements already exist, versus proposed.
13. It was suggested that the applicant should come up with a tenant handbook of rules and regulations addressing tenant maintenance of the spaces and acceptable and unacceptable behaviors.

WHEREAS, the Applicant declined to agree to a time extension necessary to provide additional information and allow for the Planning Commission's review; and

WHEREAS, the site bears a General Plan land use designation of 'Limited Commercial' (per Figure LU-1 of the Fairfax 2010-2030 General Plan).

WHEREAS, live-work uses require a Conditional Use Permit per the 'Limited Commercial CL zoning district, Town Code Chapter 17.092, sections 17.092.040 and 17.092.050; and

WHEREAS, at the conclusion of the December 16, 2019, public hearing, the Fairfax Planning Commission preliminarily found that:

- The information requested above is necessary to make affirmative findings required by Town Code § 17.032.060 to approve a conditional use permit for the 15 proposed live-work units.
- The applicant was not willing to provide the necessary information.
- The project as proposed did not demonstrate that it conforms to applicable portions of the General Plan; and
- The project as proposed raised unresolved questions whether it conflicted with the development regulations; and

WHEREAS, on the basis of these findings, the Planning Commission, by a vote of 7 to 0, directed staff to prepare a resolution documenting the same.

NOW, THEREFORE, BE IT HEREBY FOUND AND RESOLVED BY THE FAIRFAX PLANNING COMMISSION:

Section 1. The recitals set forth above are incorporated herein.

Section 2. Town Code 17.032.060 sets forth four criteria that must be satisfied in order to grant a requested conditional use permit. The Planning Commission has determined that they are unable to make the following required findings for approval of the proposed "Project" with the available project information:

1. The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The 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.
3. 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 any Master Plan, or other plan or policy, officially adopted by the City.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, 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.

Section 3. The Planning Commission is unable to determine the "Project" as proposed will be safe and that both the commercial uses and combination residential/commercial uses will be able to operate compatibly and without creating negative impacts between the different onsite and offsite uses with the incomplete information that has been provided.

Section 4. Without additional information the Planning Commission is unable to determine the project will be in conformance with the following Fairfax General Plan Policies:

Land Use Policy-LU-7.1.4: Amenities and improvements proposed for implementation in the Town Center Area shall be consistent with the criteria for those items as outlined in the Town Center Plan, relative to landscaping, lighting, sidewalks, street furniture, public art and ornamentation, and general guidelines pertaining to signs and banners.

Town Center Program-TC-3.2.1.1: The Town shall consider bicycle and pedestrian related development a priority when reviewing development applications

for the downtown area (re: lighting and the closed access stairway at the corner of Broadway and Merwin).

Housing Element Goal H-1: Housing opportunities for a range of household types, and incomes (including extremely low, very low, low, moderate, and above moderate incomes – as well as for homeless families and individuals). When possible the Town will encourage and assist with projects that include units for extremely low, very low, or low-income households (In the absence of deed restricted units, there is no assurance that the designated low income units will remain low income).

The approval of live-work housing on the project site requires complete information and careful crafting of conditions of approval in order to allow such a use due to the fact that housing is a conditional use in the Limited Commercial Zoning District. Housing Element Program H-4.1.1.2 encourages low income housing and consideration of a zoning designation allowing live-work residential units.

Section 5. Based on the foregoing, the Town of Fairfax Planning Commission does deny Application No. 19-15 in its entirety.

The foregoing Resolution was adopted at a regulation meeting of the Planning Commission of the Town of Fairfax held in said Town on the 16th day of January, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Phil Green, Commission Chair

Attest: _____
Ben Berto, Director of Planning and Building Services