

RESOLUTION 20- ____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION JULY 16, 2020
ACTION APPROVING A CONDITIONAL USE PERMIT FOR OUTDOOR SEATING FOR THE
LODGE RESTAURANT AT 1573 SIR FRANCIS DRAKE BOULEVARD**

WHEREAS, on July 16, 2020, after holding required public hearings on the project on June 18th, 2020 and July 16, 2020, the Fairfax Planning Commission approved the Conditional Use Permit necessary to allow outdoor dining at 1572 Sir Francis Drake Boulevard; and

WHEREAS, based on the plans and other documentary evidence in the record, the Planning Commission determined that the applicant had met the burden of proof required to support the findings necessary to approve the project with certain conditions of approval; and

WHEREAS, the Commission made the following findings:

Conditional Use Permit Findings:

- A. The approval of the Conditional Use Permit will not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
- B. The outdoor eating areas are proposed 70 to 100 feet away from the nearest residential units located to the southeast and south of the site and are separated from the residential development by hedges, trees and in some instances buildings which visually screen the outdoor eating areas and help block any noise generated by the use. Therefore, the development and use of property as approved under the Conditional Use Permit will 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.
- C. Approval of the Conditional 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 Town.
- D. Approval of the Conditional 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.

WHEREAS, the Town Council has held a public hearing on September 2, 2020 and has determined that they can make the above-listed findings regarding the merits of the project; and

WHEREAS, the Town Council has determined that the appeal of the Conditional Use Permit is not supported by the evidence in the record and presented at this public hearing;

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Town Council of the Town of Fairfax denies the appeal and upholds the July 16, 2020 decision of the Planning Commission approving the project subject to the Conditions of Approval contained in attached Exhibit A.

The foregoing resolution was adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town, on the 2nd day of September by the following vote, to wit:

AYES:

NOES:

ABSENT:

RENEE GODDARD, Mayor

Attest: _____
Michele Gardner, Town Clerk

Exhibit A

RESOLUTION NO. 2020-04

A Resolution of the Fairfax Planning Commission Approving Application # 20-5 to Allow Outdoor Eating Areas at 1573 Sir Francis Drake Boulevard for the Existing Lodge Restaurant

WHEREAS, the Town of Fairfax has received an application for a Conditional Use Permit to allow outdoor seating for the existing restaurant; and

WHEREAS, the Planning Commission held duly noticed Public Hearings on June 18, 2020, and on July 16, 2020 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 for outdoor dining; 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 Conditional Use Permit; and

WHEREAS, the Commission has made the following findings:

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

Policy LU-7.2.3: Traffic and parking concerns related to new and renewed development shall be addressed in a manner that does not result in undue hardship or significant negative impacts on properties and infrastructure in the vicinity.

Program LU-7.2.3.1: Approve business permits that do not impact neighborhood quality of life, neighborhood character or vehicular circulations and parking.

The proposal complies with the Zoning Ordinance as follows:

Conditional Use Permit Findings:

- A. The approval of the Conditional Use Permit will not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
- B. The outdoor eating areas are proposed 70 to 100 feet away from the nearest residential units located to the southeast and south of the site and are separated from the residential development by hedges, trees and in some instances buildings which visually screen the outdoor eating areas and help block any noise generated by the use. Therefore, the development and use of property as approved under the Conditional Use Permit will 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.

- C. Approval of the Conditional 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 Town.
- D. Approval of the Conditional 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.

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

Conditions of CUP Permit Approval

1. The project is limited to the table and chair placement depicted in the revised plan dated 7/1/20 revised to include the elimination of tables 2, 7 and the 2 seat table outside the hitching post wall at the front of the site, and relocation of the bike racks within the enclosure at the rear of the site adjacent to table 1, to the previous location of the 2 seat table outside the hitching post wall at the front of the site.
2. During daylight savings time, from March 8th through November 1st each year, business hours shall be limited to Tuesday through Thursday and Sundays from 9 AM to 8 PM and Friday and Saturday from 9 AM to 9 PM. During non-daylight savings time, from November 2 through March 7 each year, the hours will be limited to Tuesday through Sunday from 9 AM to 5 PM. The restaurant shall remain closed on Mondays. If daylight savings time is abandoned the dates listed previously shall prevail.
3. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, planters, outdoor furniture, 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 or site, including but not limited to new lighting, new signs, planters, table and seating relocation, 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. There shall be no storage of any materials, supplies for the business outside the building other than the outdoor furniture.
8. There shall be no outdoor entertainment, including the piping of prerecorded or other transmission of music to the outdoor eating area without a modification of this Conditional Use Permit by the Fairfax Planning Commission.
9. Failure to comply with the conditions for modified Conditional Use Permit # 20-05 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).

Miscellaneous Conditions

10. The project requires the submission and approval of plans by the Health Department prior to issuance of the building permit for the outdoor eating area.
11. If additional lighting for the outdoor area, or any other changes to the approved plan, are deemed necessary going forward, they shall either be approved by the Planning Director, or if he deems it necessary, shall be approved by the Planning Commission as a modification of this Conditional Use Permit.
12. Existing lighting fixtures currently lighting outdoor areas of the site shall not result in light spilling beyond the access pathways or beyond the enclosed seating area.
13. The above 2 conditions are not meant to restrict low level individual table lights that do not spill light beyond the table surfaces.
14. The applicants shall obtain a sign permits prior to erecting any new signs from either the staff or the Planning Commission as required by the Sign Ordinance, Town Code Chapter 17.064.
15. This Conditional Use Permit shall not be in effect until October 3, 2020, or whenever the Governor's "Roadmap to Resilience" or other equivalent state plan reaches the stage that eliminates the social distancing regulations requiring 6 feet of social distancing separation between diners that are not living together, whichever comes first. If the Marin County Health Department extends social distancing or other coronavirus-related requirements beyond October 3, the applicant shall comply with all applicable requirements.

The applicant shall comply with all requirements of the Department of Alcohol and Beverage Control, and shall obtain any necessary permits from the Marin County Environmental Health Department prior to switching from the Temporary Covid-19 Use Permit (TUP) operations to the Conditional Use Permit (CUP) operations.
16. The applicant shall work with the residential property owner directly to the south of the site to erect a sound barrier or other type of barrier to reduce noise spillage from the site prior to implementation of the Conditional Use Permit unless the 2 parties provide written notice to the Town that both agree the wall is unnecessary.
17. The applicant shall maintain 6 to 12 inches of mulch in and around the redwood grove to minimize impacts to the trees of people walking around and sitting amongst them.

18. The driveway directional signs shall be changed to that it is clear that the entrance to the rear parking lot is from the east driveway and the exit is from the west driveway.

19. The Use Permit shall be scheduled for review by the Planning Commission for revision only if at least 2 complaints are received by unrelated persons residing at different addresses within a 1 month period.

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

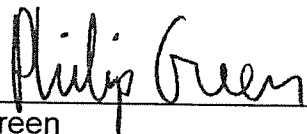
The approval of the Conditional Use Permit can occur without causing significant impacts on neighboring businesses or residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on July 16, 2020, by the following vote:

AYES: Clark, Fragoso, Newton, Swift, Chair Green


NOES: Rodriguez

ABSTAIN: None



Chair Green

Attest:



Ben Berto, Director of Planning and Building Services