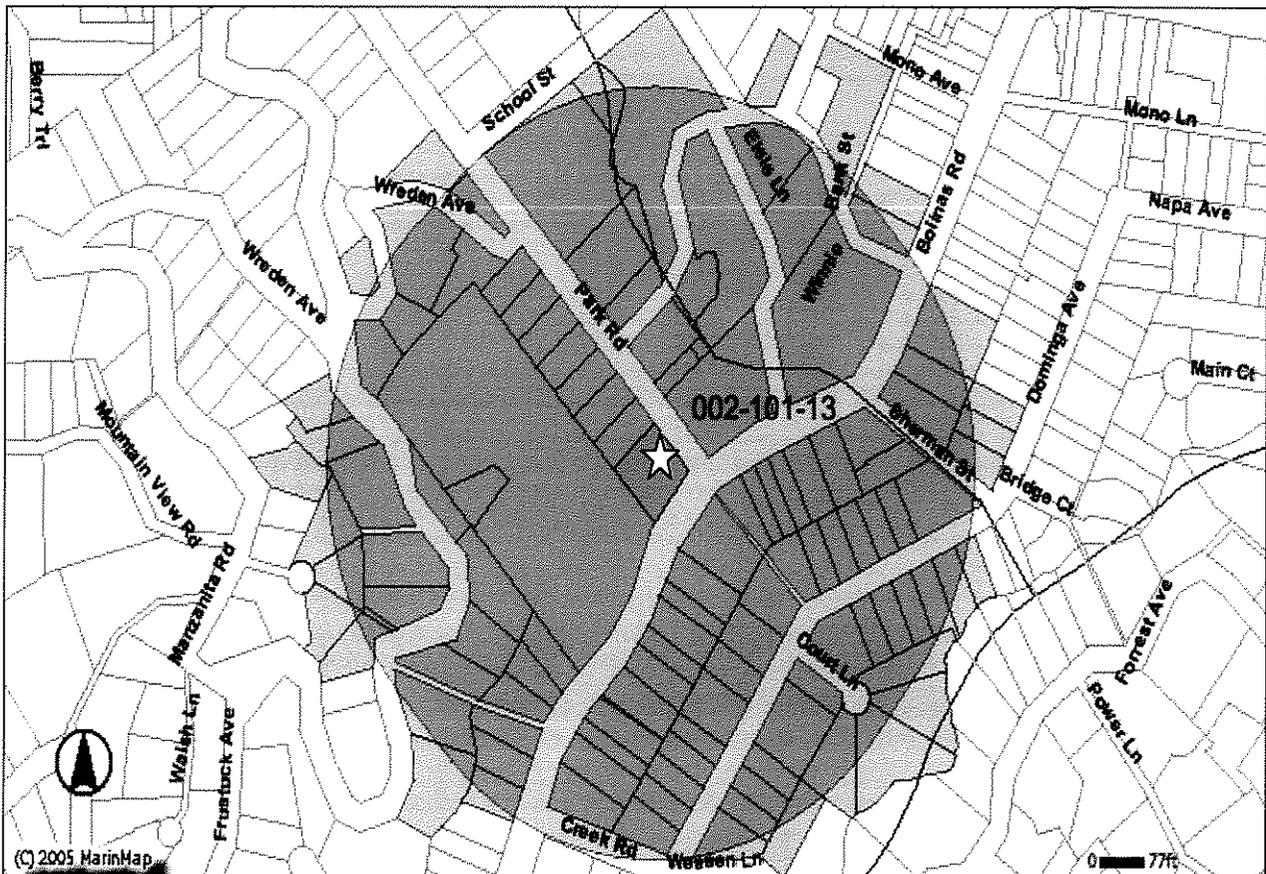


**TOWN OF FAIRFAX  
STAFF REPORT**

**TO:** Mayor, Members of Town Council  
**DATE:** November 7, 2012  
**FROM:** Jim Moore, Director of Planning & Building Services  
**LOCATION:** 150 Bolinas Road; Assessor's Parcel No. 002-101-13  
**PROJECT:** Changing 7-11's hours to remain open 24 hours per day  
**ACTION:** Appeal of Use Permit Approval; Application # 79-UP-33  
**APPELLANT:** Misty Moreno  
**OWNER:** Richard N. Matthews Trust  
**SUBJECT:** Adoption of Resolution No. 12-70, a Resolution of the Town Council of the Town of Fairfax adopting findings for the granting of the Appeal of Planning Commission approval of a Use Permit Modification to allow 7-11 to remain open 24 hours a day; Assessor's Parcel No. 002-101-13



**150 BOLINAS ROAD**

**AGENDA ITEM #** 11  
12

## **BACKGROUND**

On May 19, 2011, the Planning Commission conditionally approved a modification to the Use Permit for the 7-11 at 150 Bolinas Road (the "Owner"), which allowed the Owner to operate 24 hours per day subject to various conditions. One of the conditions was that the modification be subject to a review six months later to assess the impacts of the store remaining open 24 hours per day. The review occurred at the November 17, 2011 Planning Commission meeting, at which the Planning Commission imposed additional conditions on the Owner, including a second six month review to assess impacts. The Planning Commission conducted the second review on May 19, 2012, at which time the Commission granted final approval of the Use Permit modification for the Owner to operate 24 hours per day, subject to all of the previously imposed conditions as well as certain additional ones.

Misty Moreno filed an appeal of that decision on May 24, 2012.

The Town Council held its hearings on the appeal on July 11, September 5, and Oct. 3<sup>rd</sup>, and then continued the hearing until Nov. 7<sup>th</sup> 2012 directing the Town Attorney and Planning Staff to prepare a resolution with findings to uphold the appeal and reverse the decision of the Planning Committee to conditionally extend the modification extending the hours of operation.

Please find attached to this report, as **Exhibit A**, Resolution No. 12-70. Please be advised that all previous staff reports and attachments are available on-line at the Town's webpage at: [www.townoffairfax.org](http://www.townoffairfax.org).

## **RECOMMENDATION**

1. Open the public hearing and take public testimony.
2. Close the public hearing.
3. Move to uphold the appeal and reverse the approval by the Planning Commission of the modification of the Use Permit that allows 24-hour operations of the 7-11 on the Property; revising the conditions of the Use Permit, effective December 1, 2012 and delete the permission to operate between 12:00 a.m. and 6:00 a.m. as well as conditions added by the Planning Commission on and after May 19, 2011; and effective on December 1, 2012, the Use Permit, with the rights and conditions as they existed prior to May 19, 2011, shall remain in full force and effect.

## **ATTACHMENTS**

**Exhibit A** – Resolution No. # 12-70

**RESOLUTION NO. 12-\_\_\_**

**A RESOLUTION OF THE FAIRFAX TOWN COUNCIL GRANTING THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF A USE PERMIT MODIFICATION ALLOWING 24-HOUR RETAIL OPERATIONS AT 150 BOLINAS ROAD; APPLICATION # 79-UP-33; ASSESSOR'S PARCEL NUMBER 002-101-13**

**WHEREAS**, in 1972, the Planning Commission granted a use permit for the operation of a retail store on the property at 150 Bolinas Road (the "Property"), which use permit was subsequently modified in 1979 and designated as 79-UP-33 (the "Use Permit");

**WHEREAS**, a 7-11 retail market has been operated continuously on the Property since the Use Permit was granted;

**WHEREAS**, the Use Permit was issued subject to certain conditions, which among other things, limit the hours of operation to 6:00 a.m. to 12:00 a.m.;

**WHEREAS**, in 1979, the Planning Commission denied a request to modify the Use Permit to allow 24-hour operations based on concerns from the then Police Chief and local residents that 24-hour operations would significantly change the atmosphere and climate of the area during late night and early morning hours;

**WHEREAS**, on March 16, 2011, the owner of the Property and the current operator of the 7-11 submitted an application for a modification to the Use Permit to allow 24-hour operations;

**WHEREAS**, pursuant to Section 17.032.060 of the Town Code, the final disposition of a application for a modification of a use permit must be supported by certain determinations and findings before it can be approved, including the finding that "The development and use of property, as approved under the use permit, shall not create a public nuisance, 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, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit";

**WHEREAS**, on May 19, 2011, the Planning Commission, based on the findings and conditions in the Staff Report to the Planning Commission dated April 21, 2011 and other evidence in the record before it, granted a modification to the Use Permit allowing 24 hours per day operations, subject to various additional conditions, including a requirement that the modification be subject to a review six months later to assess the impacts of the store's extended hours on the community;

**WHEREAS**, on November 17, 2011, the Planning Commission reviewed the impacts of the extended hours and imposed additional conditions on the Property, including a second six month review to assess impacts; and

**WHEREAS**, the Planning Commission conducted the second review on May 19, 2012, at which time the Commission approved the Use Permit modification for the Owner to operate 24 hours per day, subject to all of the previously imposed conditions as well as certain additional ones, including requirements for fencing, landscaping and signage to discourage parking and idling autos;

**WHEREAS**, on May 24, 2012, Misty Moreno (“Appellant”), owner of a house on the adjoining parcel to the Property, filed an appeal of that decision on May 24, 2012, and the Town Council held a duly noticed public hearing on the appeal on July 11, September 5, and October 3, 2012, at which time all interested parties were given a full opportunity to be heard and to present evidence, and the Council reviewed the records of the Planning Department and Planning Commission related to the Use Permit modification;

**WHEREAS**, at the public hearing, the Council received and reviewed testimony and documentary evidence including, but not limited to, police reports of calls regarding noise, drunk persons, and thefts at the Property between midnight and 6:00 a.m.; statements from the Appellant and other residents in the area that they have been disturbed by noise caused by cars, skateboarders and other persons gathering in the Property parking lot between midnight and 6:00 a.m., and increased litter on and around the Property; statements by Appellant that the noise situation is a nuisance to her, disturbs her family’s sleep nightly, and is worsening, and that her adjacent property is impacted by 7-11 customers who urinate and throw trash on her property; and statements by Appellant that the value of her home would be reduced due to the 24-hour operations at the Property;

**WHEREAS**, also at the public hearing, staff reported on discussions with the owner of the property and operator of 7-11 regarding potential mitigation measures such as a sound wall, but there was testimony from Appellant and other residents that a sound wall would not be effective to mitigate the impacts of the modified hours.

**NOW, THEREFORE**, the Town Council of the Town of Fairfax does hereby find and determine, based on substantial evidence in the record before it at the public hearing, as follows:

1. The approval of the modification to the Use Permit permitting 24-hour operations has resulted in, and will continue to cause, public nuisances such as excessive noise during the hours from midnight to 6:00 a.m. in the area of the Property;
2. That the approval has caused and would continue to cause excessive or unreasonable detriment to adjoining properties or premises, including but not limited to Appellant’s property in the form of undue or excessive burdens in the use and enjoyment thereof due to noise and litter
3. That the effects are substantially beyond that which might occur without approval of the modification, in which case the Property would not be open for business between midnight and 6:00 a.m.

4. That, based on these circumstances, the findings as required by Sec. 17.032.060 to support the requested modifications to the Use Permit cannot be made.

**NOW, THEREFORE**, the Town Council of the Town of Fairfax does hereby, based on the findings enumerated above, resolve as follows:

1. The Council grants the appeal and reverses the approval by the Planning Commission of the modification of the Use Permit that allows 24-hour operations of the 7-11 on the Property;
2. The Council revises the conditions of the Use Permit, effective December 1, 2012, to delete the permission to operate between 12:00 a.m. and 6:00 a.m. as well as conditions added by the Planning Commission on and after May 19, 2011; and
3. The Council confirms that, effective December 1, 2012, the Use Permit, with the rights and conditions as they existed prior to May 19, 2011, shall remain in full force and effect.

**THE FOREGOING RESOLUTION** was duly and regularly adopted by the Town Council of the Town of Fairfax, County of Marin, State of California, at a regular meeting thereof, held on the 7th day of November, 2012, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

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PAM HARTWELL-HERRARO,  
MAYOR

Attest:

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Judy Anderson, Town Clerk