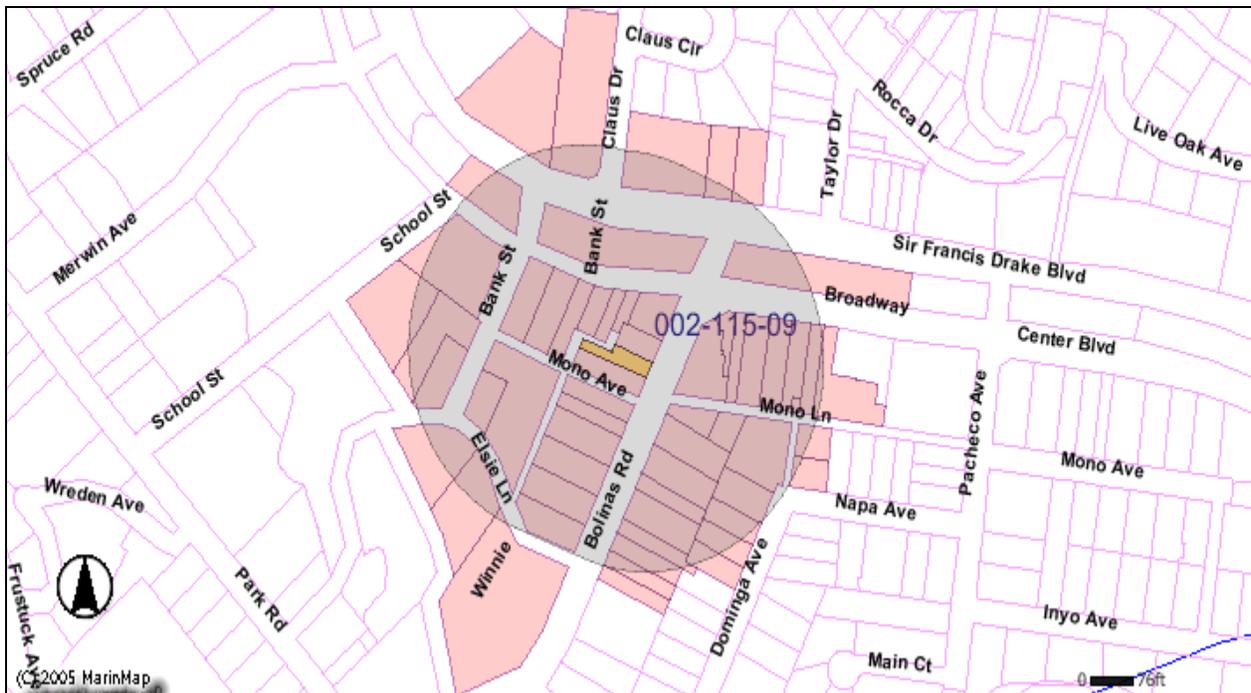


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: April 15, 2010
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 20 Bolinas Road; Assessor's Parcel No. 002-115-19
PROJECT: Permit for live amplified music
ZONING: Central Commercial CC Zone
ACTION: Use Permit; Application # 10-07
APPLICANT: Eddy Bacci
OWNER: Same
CEQA STATUS: CEQA categorically exempt, §15301



20 BOLINAS ROAD

BACKGROUND

The 3,460 square foot site is developed with a multiuse structure the square footage of which is not available in the Town or the County records. The first floor houses a bar and the second floor is developed with a residential apartment. The property is located in the Central Commercial CC Zone District.

DISCUSSION

The property owner also operates the bar and is requesting a Use Permit to have live, amplified music, Thursday through Saturday nights from 9:30 PM to 1:00 AM. Town Code § 17.100.040(A)(8) indicates that bars are a permitted use but theaters, night clubs and entertainment establishment are permitted only with a Use Permit from the Planning Commission [Town Code § 17.100.050(C)].

The other two bars in town already have Use Permits for live entertainment (amplified music).

A review of the records indicate that the hours approved for the other establishments do not extend beyond 1 PM which is in keeping with the hours proposed by Nave's Bar.

Noise from the live music establishments has been an issue for residents in the hillside areas in the past and the Use Permits were reviewed in the mid 1980's and in August of 2000 when 19 Broadway proposed an expansion. Neighbors in the hillside areas of the Forrest Avenue area and Ridgeway complained that the live music was impacting their quality of life, especially during the summer when the doors and windows to the businesses were kept open to alleviate the heat.

19 Broadway has the most extensive conditions based on the 2000 review of their Use Permit and they include the following relating to noise:

1. Doors and windows shall remain closed when live entertainment is occurring including during afternoon performances.
2. The Code Section and decibel limit permitted by the Noise Ordinance shall be erected by the business entrance (note other conditions relate to discouraging parking in the neighborhoods adjacent to the theatre and bar be erecting sign directing persons to the Parkade parking and other public lots).

The neighboring commercial businesses have hours that will not conflict with the proposed live music. To the south is a bicycle beer and wine bar, whose hours are 4:30 PM to 2:00 AM and to the north is a children's clothing store that is open from 10:00 AM to 6:00 PM. The only neighboring use that could be in conflict with the proposed live music is the residential use upstairs. However, there are residences above 19 Broadway and there is an expectation of nighttime noise when you rent a residential unit above bars in a well established commercial area with an active nightlife.

OTHER AGENCY REQUESTS/REQUIREMENTS

No other Town Departments or outside agencies had any comments or recommended conditions for this requested Use Permit.

RECOMMENDATIONS

Move to approve application # 10-07 based on the following findings and subject to the following conditions:

Recommending Findings

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 because the live entertainment will occur during the same hours as previously approved Use Permits for live entertainment.
2. Live entertainment in the establishment generates the largest draw of customers in the evenings between 9:00 PM and 2:00 AM when adjacent retail businesses are closed and the nearby restaurants have already finished their dinner rush. Therefore, the approval of 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 Conditional Use Permit complies with the objectives, goals and standards set forth in the Fairfax General Plan and Zoning Ordinance which indicate that a nighttime population and mixed uses are desirable in the downtown commercial area and that noise level shall be kept at reasonable limits (General Plan Noise Element and Town Code § 17.100.010).
4. Approval of Use Permit # 10-07 allows live music to occur at a long established business with conditions in place to monitor and control its impact on the adjacent businesses, residential areas and the general well being on the downtown commercial core area.

Recommended Conditions

1. Live music shall end at 1:00 PM.
2. All windows and doors shall remain closed when live entertainment is occurring.
3. Signs shall be posted displaying the Code Section and decibel limit permitted by the Noise Ordinance shall be erected by the business entrance. The Use Permit shall not be

in effect until the signs are posted and inspected by the Department of Planning and Building Services.

4. The applicant shall comply with all applicable local, County, State and Federal laws and regulations. Local Ordinances which must be complied with will include but not be limited to the following:
 - Noise Ordinance, Fairfax Town Code Chapter 8.20
 - Environmentally Acceptable Packaging Materials Ordinance, Town Code Chapter 8.16
 - Garbage and Rubbish Disposal Ordinance, Town Code Chapter 8.08
 - Urban Runoff Pollution Prevention, Town Code Chapter 8.32
 - Americans with Disabilities Act

5. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers, and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or owner's duty to so defend, indemnify, and hold harmless shall be subject to the Town's promptly notifying the applicant or owner of any said claim, action, or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions, or proceedings.

ATTACHMENTS

Applicant's supplemental information

