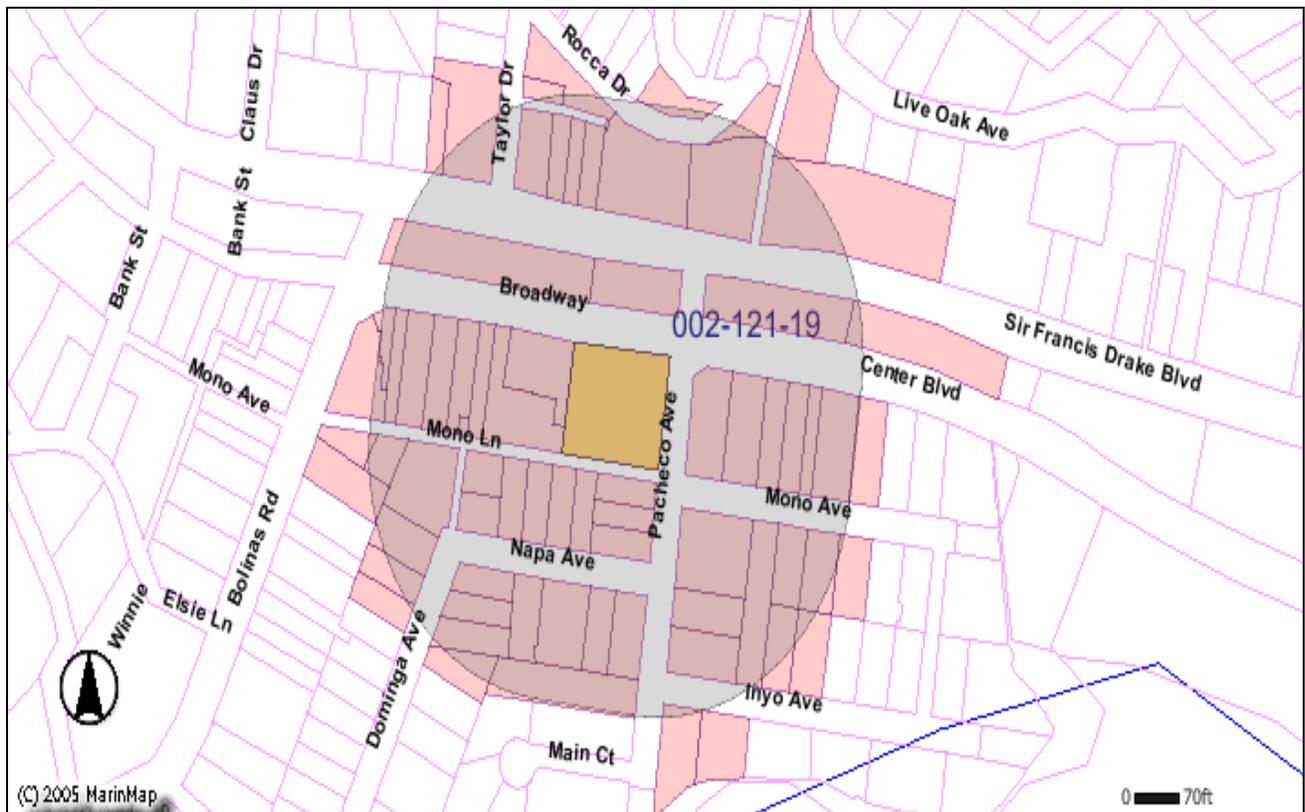


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: July 15, 2010
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 9 Broadway; Assessor's Parcel No. 002-121-19
SUBJECT: Theater expansion
ACTION: Use Permit Modification and Parking Variance; application # 10-16
APPLICANT: Dave Corkill, applicant
OWNERS: David and Karen Corkill
ZONING: Central Commercial CC Zone
CEQA: Categorically exempt, § 15301(e)(1)



9 BROADWAY

BACKGROUND

Currently existing on this 20,250 square foot site is a 10,210 square foot, 5 theater cinema complex. The original structure was built in 1952 with one 650 seat theater. The theater was divided into two smaller theaters, one with 160 seats and a second with 385 seats in 1992. The theater was expanded and remodeled into a 10,210 square foot, four theater complex in 1998. A final remodel occurred in 2004 within the existing structure to accommodate 5 screens.

DISCUSSION

The project encompasses the construction of a 1,632 square foot addition that will accommodate a 6th, 140 seat theater and to remodel the box office to make it ADA accessible. The project includes the provision of a planting strip along the frontage of the expansion planted with agapanthus and star jasmine and provided with a drip irrigation system.

Use Permit

Town Code § 17.100.050(C) allows theater uses only with the approval of a Use Permit by the Planning Commission. 17.100.050 clearly indicates that no conditional use may be expanded in the CC Zone unless a Use Permit is obtained first. Therefore, expansion of the theater requires a Use Permit.

The purpose of the Central Commercial CC Zone District is to cater to and invite pedestrian traffic. The theater draws movie goers from all over Marin who then shop and visit the Town's restaurants and drinking establishments.

Parking Variance

Town Code § 17.052.030(C) requires that theaters be provided with 1 parking space for every 6 seats. Based on this requirement the original 650 seat theater would have had to be provided with 108 parking spaces in order to comply. The existing cinema complex has actually had the number of seats reduced from 650 to 478. Even with the proposed 6th theater, the total 618 seats will be less than the original 650 seat facility.

The addition will decrease the square footage of the parking lot from 10,040 to 8,402 square feet. The parking lot will be reconfigured so that the expansion will result in the loss of only one parking space and the one-way aisle width will not be narrowed below the 15 feet required by the Town Code [Town Code Chapter 17.052, Appendix A, Width of Aisles]. Twenty-four (24) spaces are proposed. The applicant seeks a variance from the parking standards based on the following: The only area available for theater expansion is the parking lot; the proposed configuration will only decrease the existing parking by 1 space; the existing theater provides more off-street parking than any other central commercial establishments; the project is in the general interest of the public.

An informal survey of Mill Valley, Albany, Berkeley and Piedmont indicate that existing theaters that have been converted to multiple screen complexes have limited to no on-site parking.

Traffic Impacts

Town Code Chapter 17.056.050 sets forth the criteria for determining whether or not projects are subject to the Traffic Impact Permit process. W-Trans, the applicant's traffic engineer, prepared the attached traffic study dated February 1, 2010.

CraneTransportation Group, the traffic engineering firm that performs the Town's traffic study peer reviews, commented on the study requesting additional information. The project engineer responded to the Town's Engineer's comments and staff determined the project is not subject to the Traffic Impact permit process (Exhibit A – traffic information).

Other Agency/Department Comments

Building Official

All new exits must be accessible.

If the value of the project exceeds \$125,000 the whole building will need to be brought into compliance with the California Building Code and the Americans with Disabilities Act accessibility regulations.

The preliminary planning application plans are incomplete for a detailed plan review in order to determine life/safety and accessibility requirements. Any building permit application will be subject to a final review by the Building Official and must comply with any and all of his requirements.

Ross Valley Fire Department

A minimum 2A10BC fire extinguisher shall be installed every 3,000 square feet or every 75 feet of travel distance.

The sprinkler system and fire alarm system shall be expanded to include the addition.

The building permit plans and application shall be subject to a re-review by the Ross Valley Fire Department prior to issuance of the permit.

Marin Municipal Water District

The Marin Municipal Water District has indicated that the proposed addition will require the purchase of additional water entitlement. The owner disagrees with this condition and has written the Water District a letter disputing the need for a increased water entitlement.

Issuance of the building permit will be subject to the applicant providing the Town with a letter indicating; 1) they are going to comply with the Water Districts determination; b) a letter from the Water District indicating that they have revised their position with respect to an increased entitlement need.

The landscaping must be designed in accordance with Landscape Ordinance # 485.

Should backflow protection be required it shall be installed and inspected by the District prior to the project final inspection by the Building Official.

Prior to issuance of the building permit for the project the project shall be reviewed and approved by the Design Review Board.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 10-16 based on the following findings and subject to the following conditions of approval:

Recommended Findings

1. The proposed use and its location are in accord with the objectives of the Central Commercial Zoning District which are to cater to and invite pedestrian traffic.
2. The proposed use, its location and the proposed conditions under which it will operate and be maintained will be consistent with the General Plan and will not be detrimental to the public health safety or welfare of persons residing or working in or adjacent to the neighborhood of the use.
3. 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 Town has granted parking variances for other establishments that are unable to provide on-site parking in compliance with the Town Code due to the size of their sites.
4. Movie times are staggered so upon completion of the addition the theater will contain 642 seats, with movie goers arriving a departing a different times. The expanded complex will have less of an impact than the original 650 seat theater. 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.

5. The Fairfax Theater represents a facility and use determined to be singular and unique to Town and vital to the active Town core area. 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.
6. Approval of the use permit will result in equal or better development of the premises than would be the case if the Theater were unable to continue to operate and complete with the other large complexes in Marin County. Therefore, said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.
7. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specified regulation because the number of seats is being reduced from the 650 originally approved for the structure and site.
8. Granting of the variance will not result in the parking or loading of vehicles on public streets in a manner as to interfere with the free flow of traffic on the streets.
9. Granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of the Zoning Ordinance.

Recommended Conditions

1. The landscaping and irrigation shall be installed prior to the project final inspection. Landscaping shall include three appropriate shade trees to replace the vacant tree well and the landscaping planter on the east side of the parking lot. A landscaping bond or letter of credit shall be provided to the Town in an amount determined by the project Landscape Contractor. This amount will be held for 18 months to ensure the landscaping becomes established.
2. The parking lot shall be restriped prior to the project final inspection.

Building Official Conditions

3. All new exits must be accessible.
4. If the value of the project exceeds \$125,000 the whole building will need to be brought into compliance with the California Building Code and the Americans with Disabilities Act accessibility regulations.
5. The preliminary planning application plans are incomplete for a detailed plan review

in order to determine life/safety and accessibility requirements. Any building permit application will be subject to a final review by the Building Official and must comply with any and all of his requirements.

Ross Valley Fire Department

6. A minimum 2A10BC fire extinguisher shall be installed every 3,000 square feet or every 75 feet of travel distance.
7. The sprinkler system and fire alarm system shall be expanded to include the addition.
8. The building permit plans and application shall be subject to a re-review by the Ross Valley Fire Department prior to issuance of the permit.

Marin Municipal Water District

9. The Marin Municipal Water District has indicated that the proposed addition will require the purchase of additional water entitlement. The owner disagrees with this condition and has written the Water District a letter disputing the need for a increased water entitlement.
10. Issuance of the building permit will be subject to the applicant providing the Town with a letter indicating; 1) they are going to comply with the Water Districts determination; b) a letter from the Water District indicating that they have revised their position with respect to an increased entitlement need.
11. The landscaping must be designed in accordance with Landscape Ordinance # 485.
12. Should backflow protection be required it shall be installed and inspected by the District prior to the project final inspection by the Building Official.
13. Prior to issuance of the building permit for the project the project shall be reviewed and approved by the Design Review Board.

Standard Conditions

14. The applicant shall maintain regular garbage and recycling service.
15. The applicant shall maintain the premises in a neat and attractive manner at all times and such maintenance shall include but not be limited to exterior building materials, signage, windows, planters, the ground and pavement surfaces.
16. 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, Environmentally Acceptable Packaging and Materials Ordinance, Garbage and Rubbish Disposal Ordinance, Urban Runoff Pollution Prevention Ordinance, the Smoking Ordinance and the Americans With Disabilities Act.

17. Construction shall not begin before 8 AM Monday through Friday and shall end by 8 PM. On weekends construction shall not begin before 9 AM and shall not continue past 8 PM.

18. The applicant shall comply with the regulations and requirements of the Fairfax Police Department.

19. The applicant shall obtain an acknowledgment letter from the Bay Area Air Quality Management District (BAAQMD) prior to any demolition and provide a copy to the Building Department prior to issuance of the building permit. The applicant shall comply with any and all requirements and/or conditions of BAAQMD.

20. The applicant shall comply with all conditions of the Fairfax Police Department.

21. After restriping the applicant shall restore the signs in the parking lot directing moviegoers to the Parkade, Pavillion and Mono Lane parking lots to encourage patrons to park in Town lots and not the surrounding neighborhood.

22. Prior to issuance of a building permit the applicant or his assigns shall:

- a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:
 - Construction delivery routes approved by the Department of Public Works.
 - Construction schedule (deliveries, worker hours, etc.)
 - Notification to area residents
 - Emergency access routes
- b. The applicant shall prepare, and file with the Public Works Director, a video of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director/ the Public Works Director can waive this requirement).
- c. Submit a bond or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Building Official and Public Works Director. Upon approval of the contract costs, the applicant shall submit a bond or letter of credit equaling 100% of the estimated construction costs.
- d. The applicant shall submit a cash deposit to the Town in an amount that will cover the cost of landscaping and irrigation materials and installation prior to

issuance of a building permit. The amount shall be retained for 18 months after installation of the plants and irrigation and inspection for compliance by the Planning Staff.

e. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the developments conformance with their recommendations.

23. During the construction process the following shall be required:

a. The project engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to the Town staff that the grading has been completed as recommended prior to installation of foundation and retaining forms and piers.

b. Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans. The building official shall field check the concrete forms prior to the pour.

c. All construction related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waved by the building official on a case by case basis with prior notification from the project sponsor.

d. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

24. Prior to issuance of an occupancy permit the following shall be completed:

a. The project engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, retaining, grading and, if required, drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.

b. The Planning Department shall field check the completed project to verify that all design review and planning commission conditions have been complied with including installation of landscaping and irrigation.

25. The roadways shall be kept clean and the site free of dust by watering down the

site or sweeping the roadway daily, if necessary.

26. During construction developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".

27. Notwithstanding section # 17.072.050 of the Fairfax Zoning Ordinance, any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Use Permit # 10-16. Any construction based on job plans that have been altered without the benefit of an approved modification of Use Permit #10-16 will result in the job being immediately stopped and red tagged.

28. 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

Exhibit A – Applicant's supplemental information

Exhibit B – Traffic information and peer review

Exhibit C – Other agency and department comments