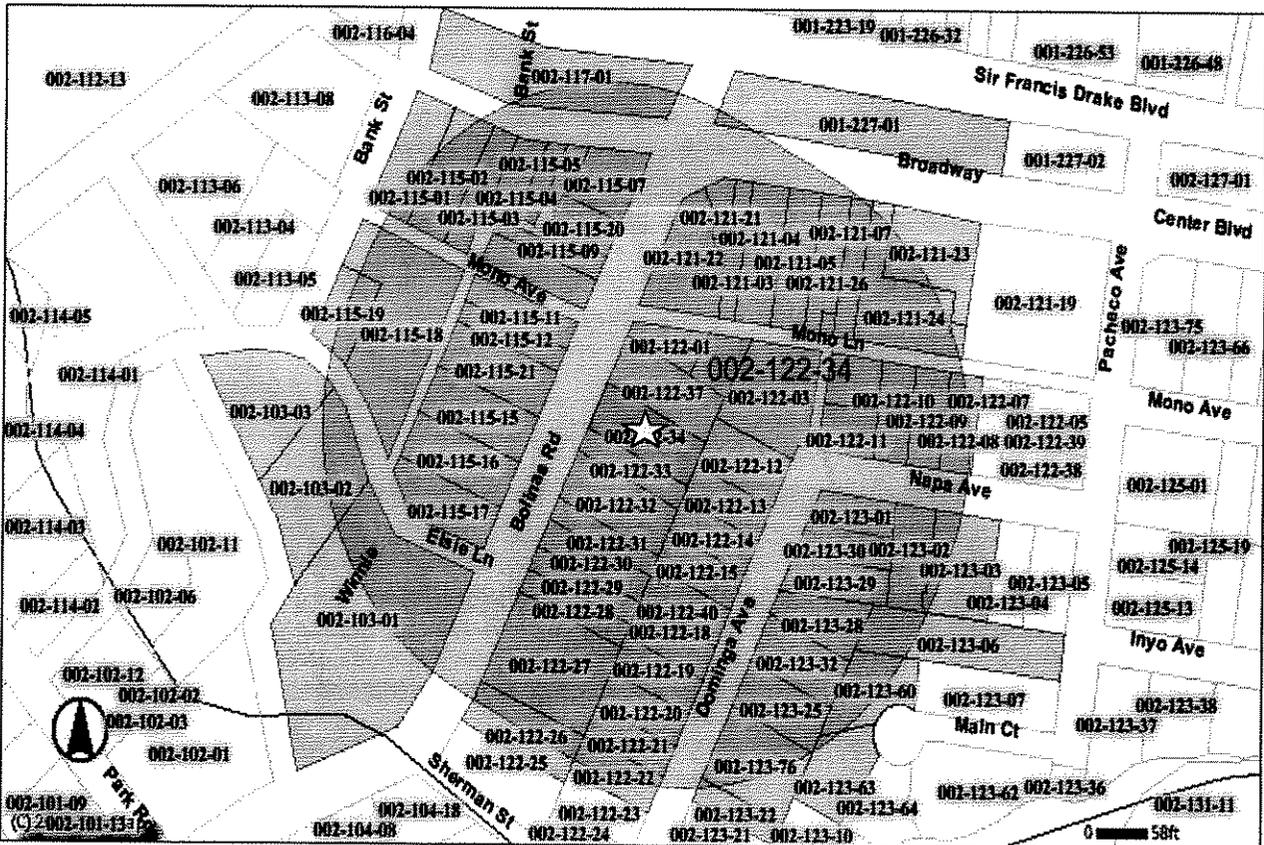


**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** September 15, 2011  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Linda Neal, Senior Planner  
**LOCATION:** 31 Bolinas Road; Assessor's Parcel Numbers 002-122-01, 02 and 37  
**ZONING:** Central Commercial CC Zone District  
**PROJECT:** Outdoor seating area for an existing restaurant.  
**ACTION:** Use Permit; Application # 11-15  
**APPLICANT:** Lydia Kindheart, Lydia's Lovin Foods  
**OWNER:** Brad Schwann  
**CEQA STATUS:** Categorically exempt, § 15301(a)



31 BOLINAS ROAD

## BACKGROUND

This item was continued from the July 21, 2011 meeting where the Commission directed the applicant to provide the following additional information:

1. A list of delivery noise vehicle mitigation measures that have already been implemented.
2. A site plan and elevations showing a proposed garbage enclosure to mitigate mulch and other garbage odors.
3. Letters from the delivery companies indicating that they are unable to change their delivery hours and the reasons why.
4. A completed parking variance application (\$738.00 fee).

Staff was directed to research the hours of operation of other businesses with outdoor seating.

## DISCUSSION

The applicant has submitted plans showing the garbage area including recycling and composting bins immediately adjacent to the south side of the building in a 72 square foot area. The redesign retains 20 parking spaces by decreasing the spaces next to the garbage/compost area to compact stalls. Therefore, the Parking Variance required above was not necessary.

The applicant has provided an August 29, 2011 letter of a list of measures she has instituted to try to decrease the disturbances experienced at the neighboring commercially zoned property which is developed with a legal non-conforming residential use. She also has provided a letter from the only delivery company that makes early morning deliveries indicating why they are unable to change their delivery times (Exhibit B).

Staff has researched the hours of outdoor uses for downtown businesses and whether or not the businesses are operating under the provision of a Use Permit. The results were varied – see below.

BUSINESS	USE PERMIT	HOURS FOR OUTDOOR SEATING
CASA MANANA	NO	WHEN OPEN, OPEN UNTIL 10:30 PM
FAIRFIX CAFE	NO	7:30 AM TO 11:00 PM
GOOD EARTH NATURAL FOODS	YES	9:00 AM TO 9:00 PM EVERYDAY
IRON SPRINGS BREWERY	YES	4:00 PM TO 10:30 PM MONDAY TO THURSDAY, NOON TO 10:30 PM FRIDAY AND SATURDAY, NOON TO 9:30 PM SUNDAY
M & G'S	YES	11:00 AM TO 9:00 PM EVERYDAY
19 BROADWAY	YES	11:00 AM TO 2:00 AM EVERYDAY
PANCHO VILLAS	YES	12:00 NOON TO 9:00 PM SUNDAY THROUGH THURSDAY AND 12:00 NOON TO 10:00 PM FRIDAY AND SATURDAY
PERI'S BAR	YES	12:00 NOON TO 2:00 AM ON MONDAY, TUESDAY AND WEDNESDAY AND 10:00 AM TO 2:00 AM THE REST OF THE WEEK
SLEEPING LADY CAFE	YES	8:00 AM TO 10:30 PM, EVERYDAY

The Building Official has reviewed the revised site plan and has determined that the outdoor seating area complies with ADA access requirements.

For a further discussion of this application and staff's recommendation see the attached staff report dated July 21, 2011.

### **ATTACHMENTS**

Revised site plan and elevation for garbage/recycling/compost area

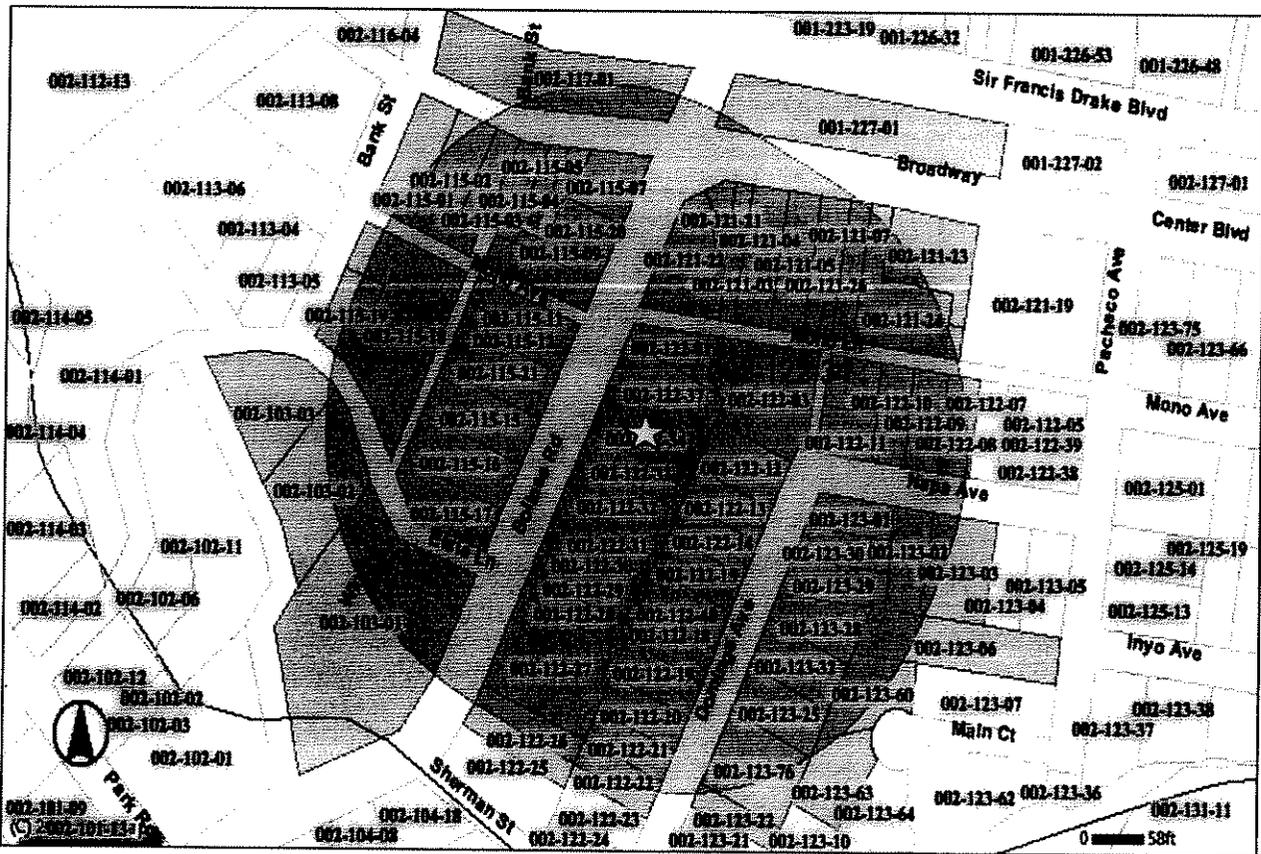
Exhibit A – Staff report and minutes from the July 21, 2011 Planning Commission meeting

Exhibit B - Applicant's new supplemental information

Exhibit C – e-mail from the neighbor at 47 Bolinas Road regarding vehicle noise

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

**TO:** Fairfax Planning Commission  
**DATE:** July 21, 2011  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Linda Neal, Senior Planner  
**LOCATION:** 31 Bolinas Road; Assessor's Parcel Numbers 002-122-01, 02 and 37  
**PROJECT:** Outdoor seating area for an existing restaurant.  
**ACTION:** Use Permit; Application # 11-15  
**APPLICANT:** Lydia Kindheart, Lydia's Lovin Foods  
**OWNER:** Brad Schwann  
**CEQA STATUS:** Categorically exempt, § 15301(a)



31 BOLINAS ROAD

## **BACKGROUND**

The 11,221 square foot site is developed with two commercial buildings that are currently being utilized as a holistic health care center, Lydia's Lovin Foods Wholesale Packaging and Distribution Center and Lydia's Lovin Foods Restaurant. A Use Permit allowing this mixed use was approved by the Planning Commission on December 20, 2002.

## **DISCUSSION**

The applicant is now proposing to convert a portion of the parking lot into a 720 square foot outdoor seating area where patrons can dine during clement weather. The area will be surfaced with pavers set in sand and separated from the parking lot by wine barrel planters landscaped with a species of vine to create a visual screen for diners. The dining patio will be separated from the adjacent public sidewalk by the existing landscaping, fence and bench.

The area will be located immediately adjacent to the building and will be oriented so that it provides thirty-eight seats with aisle widths that comply with accessibility standards. The tables will be handcrafted using sustainably harvested woods and canvas umbrellas.

The Department of Planning and Building Services inspected the buildings at 29 and 31 Bolinas Road on July 13, 2011 and determined that there were no violations of the Zoning Ordinance and/or the Use Permit for the mixed use development of the site.

### **Use Permit**

The site is located in the Central Commercial CC Zone District where restaurants are a permitted use. Town Code § 17.100.050(A) requires that the Commission grant a Use Permit for any principal permitted use not conducted entirely within a building. Therefore, the outdoor eating area requires a Use Permit.

The location is on private property so the approval of the Use Permit will not impact the general public.

The expansion is not expected to significantly increase the number of patrons to the business but will provide an alternative seating area to be used during warm weather.

### **Variance of the Parking Requirements**

The outdoor seating area will result in the elimination of two parking spaces and relocation of the required accessible parking space. While the Parking Ordinances in many communities include allowing for the provision of a certain number of compact spaces in commercial parking lots, the Fairfax Town Code is silent on the matter. In order to maintain the required twenty (20) spaces on the site the applicants propose restriping the parking lot to provide five (5) compact parking stalls (8 feet x 16 feet), fourteen (14) full sized spaces (9 feet by 19 feet) and one (1) van accessible space (9 feet x 22 feet with an eight foot aisle).

Town Code § 17.100.110(2) allows the Commission to vary the parking regulations for uses which require Use Permits in accordance with the facts, findings and determination governing the Use Permit as set forth in the Use Permit Chapter of the Town Code (Chapter 17.032).

## **Other Agency/Department Comments**

### **Marin Municipal Water District –**

- If water fixtures are proposed for the outdoor area, the installation must be reviewed and approved by the Water District.
- The increased seating will increase water demand. The purchase of additional water entitlement may be required.
- The project must comply with Water Conservation Ordinance 421.
- Should backflow Protection be required, said protection shall be installed as a condition of water service.

### **Building Official –**

The parking lot and dining area must comply with accessibility regulations.

## **RECOMMENDATION**

1. Open the public hearing and take public testimony.
2. Close the public hearing.
3. Move to approve Use Permit # 11-15 based on the following findings and subject to the following conditions of approval:

### **Recommended Findings**

The area will be located entirely on private property and a similar outdoor seating areas have been approved for other businesses in Town (M & G Burgers, Iron Springs Brewpub). Therefore, 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.

The development will not decrease the number of parking spaces and will comply with accessibility standards. Therefore, 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.

Outdoor uses are allowed if approved by the Planning Commission per Town Code § 17.100.050(A). Therefore, approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and is not contrary to the Fairfax Zoning Ordinance.

Parking and circulation of the parking area will not be significantly affected by the project and there will be a separation between the outdoor seating and parking lot. Therefore, 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.

#### Recommended Conditions

1. 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 Materials Ordinance, Garbage and rubbish Disposal Ordinance, Storm Water Management and Discharge Control Program Ordinance, Smoking Ordinance and the Americans with disabilities act.
2. If, in the future, outdoor entertainment is proposed, it will be subject to a review and modification of this Use Permit by the Fairfax Planning Commission.
3. Any proposed future exterior lighting for the outdoor area, other than table candles, shall be subject to review and approval by the Fairfax Design Review Board.
4. 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, the planters the ground, patio and pavement surfaces.
5. The outdoor furniture and landscaping is subject to review and approval by the Fairfax Design Review Board prior to the expansion. The project is scheduled for the August 10, 2011 meeting and will remain scheduled if the required design review information is received by the Town by July 27, 2011 (see Exhibit B).
6. The cobb wall around the PG & E meter shall be removed to comply with Pacific Gas and Electric's requirements; or the applicant shall provide written approval of the wall location from PG & E prior to opening the outdoor seating area. This condition was put in place by the Design Review Board on November 10, 2010 when the outdoor cobb seat and wall were approved and it has never been complied with.
7. The total restaurant area including the outdoor seating will total 1,320 square feet. The parking lot shall be restriped as depicted on the plans prepared by Morgan Hall Architect dated 7/7/11 and submitted with this application. Five (5) of the twenty (20) parking spaces shall be marked for "restaurant patron" use in accordance with Town Code § 17.052.030(2)(H) prior to expanding the business into the outdoor area.
8. Minor adjustments to the above referenced plan that don't decrease the number of parking spaces or increase the 720 square foot outdoor seating area will be subject to the review and approval by the Department of Planning and Building Services.
9. Failure to comply with the conditions of approval for Use Permit 11-15, as herein enumerated, may result in revocation or modification of the Use Permit by the Planning Commission in accordance with Chapter 17.14 of the Fairfax Town Code.
10. 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.

11. If an overall plan for redesigning the Bolinas Road sidewalks is ever approved the owner shall consider relocating the driveway entrance to be equidistant between the building and the side property line to improve on-site parking and circulation.
12. The applicant shall have a directional sign made by a professional sign company directing patrons of 29 and 30 Bolinas Road to the parking alongside the building and shall install in a permanent location in the ground. The sign shall be in place prior to outdoor restaurant use.
13. Marin Municipal Water District –
  - If water fixtures are proposed for the outdoor area, the installation must be reviewed and approved by the Water District.
  - The increased seating will increase water demand. The purchase of additional water entitlement may be required.
  - The project must comply with Water Conservation Ordinance 421.
  - Should backflow Protection be required, said protection shall be installed as a condition of water service.
14. Building Official –
  - The parking lot and dining area must comply with accessibility regulations.

#### ATTACHMENTS

Exhibit A - Applicant's supplemental information  
Exhibit B – Design Review Letter of Action  
Exhibit C – Other agency/department comments

Lydia's Kitchen Café  
31 Bolinas Rd.  
Fairfax, CA 94930

Town of Fairfax  
142 Bolinas Rd.  
Fairfax, CA 94930

TOWN OF FAIRFAX  
JUL 07 2011  
RECEIVED

Re: 31 Bolinas Rd.; Planning Application

We would like to assert the following in reference to the use of space and parking spaces required for 29 and 31 Bolinas Rd. The following is true and correct to the best of our knowledge:

**29 Bolinas Road** is used for retail space for Dragon Arts Healing Center and Karen Schneider Photography. The total space is 23' 10" x 60' dimensionally and with a square footage of **1450 square ft.** Thus, this space requires **5 spaces total.**

The amount of **office space at 31 Bolinas Road is 950 square feet** and thus requires **4 parking spaces.**

Lydia's Kitchen Café is **600 square feet**; therefore, it requires a total of **3 spaces for parking.**

The wholesale portion of the building comprises the remainder of the space (**2000 square feet**) and includes **storage, freezer, and refrigeration.** For this portion of the space there are **12-16 employees onsite** at the peak shift, equaling the need for **8 spaces max.**

With the above information, we see that the provision of 23 spaces is not necessary. Per the formula provided in code 17.53.030, we only are required to have **20 spaces total.**

Additionally, we have attached revised patio plans. We have changed the design of the patio space and will be using decorative planters and artisan made tables, hand-made from sustainably harvested wood and canvass umbrellas. We will be growing vines in the planters, creating a living wall as a divider between the parking lot and the patio. We would like to contribute to the beautification of the downtown area and create an outdoor eating area that reflects the needs of both the café and the community.

If you have any questions, please contact Denita Murphy at [denita@lydiasorganics.com](mailto:denita@lydiasorganics.com) to discuss our plans. We will be happy to schedule an inspection of the premises as necessary.

Thank you.

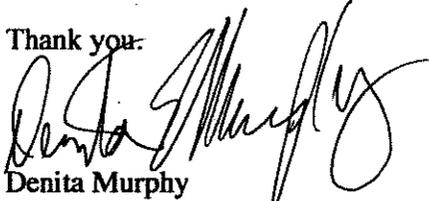
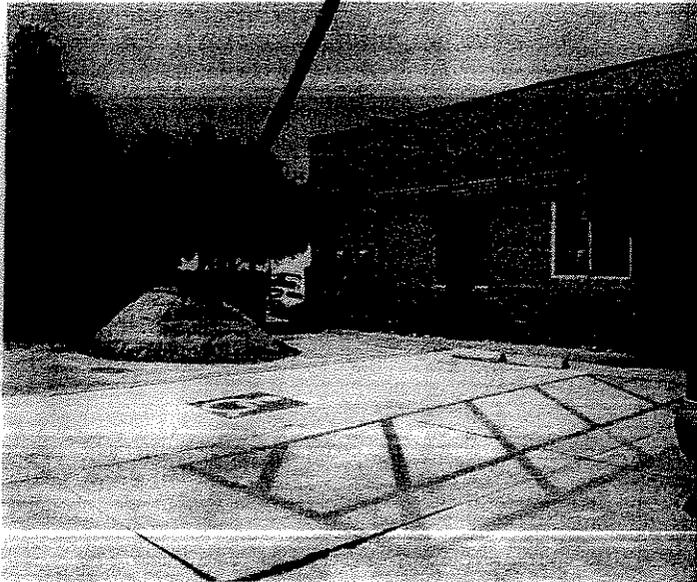
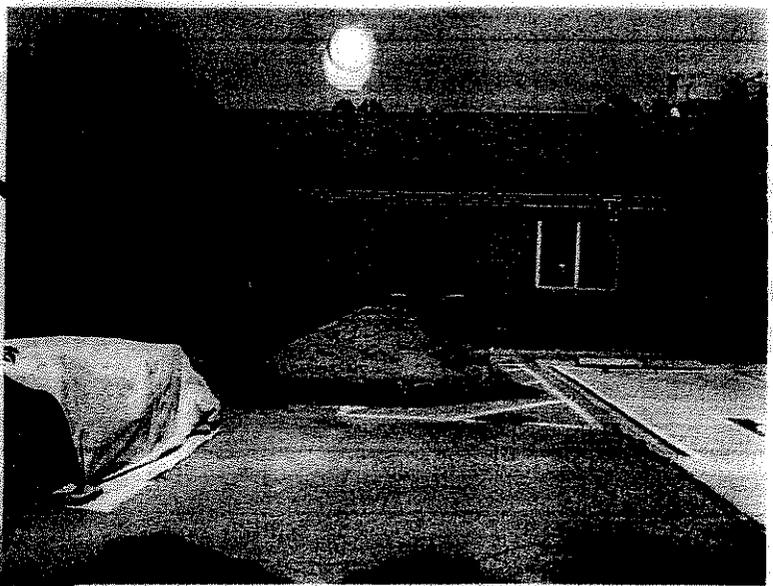
  
Denita Murphy  
Lydia's Lovin' Foods/ Lydia's Organics

EXHIBIT #

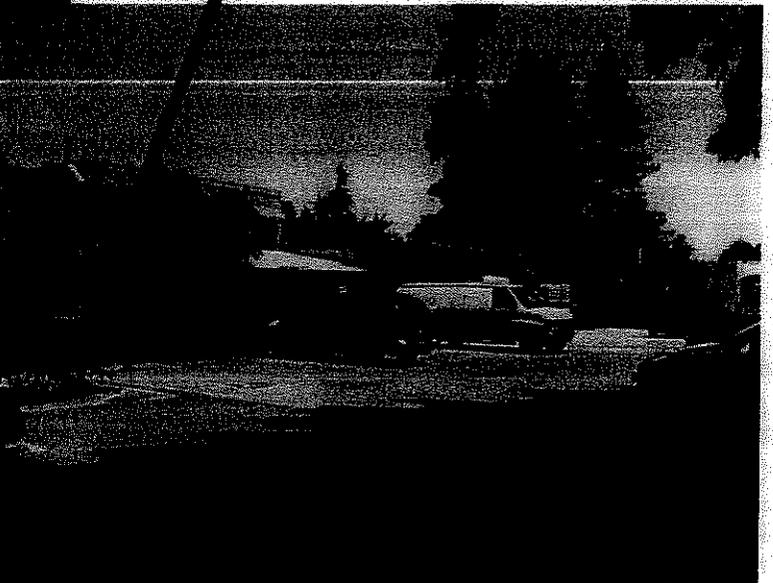
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# Lydia's Organics Proposed Patio Photos

The darker grey area is the proposed patio space (with the pile of dirt on it)



Only a small portion of the area will be used



View from across the street, patio will be blocked by these trees



TOWN OF FAIRFAX

MAY 26 2011

RECEIVED

PROJECT DESCRIPTION: Creating a brick patio without increasing elevation or grade.

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size	18,000 SF.	same
Size of structure(s) or commercial space (square feet)	8,000 SF.	same
Height and No. of stories	2 stories	same
Lot coverage	7,500	same
No. of dwellings units	3 different businesses	same
Parking <sup>1</sup> No. of spaces	22	20
Size of spaces		same

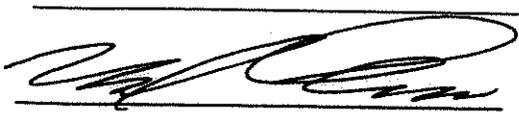
Amount of proposed excavation and fill	Excavation = 0	Fill = 0
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Estimated cost of construction \$1600

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

<sup>1</sup>Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

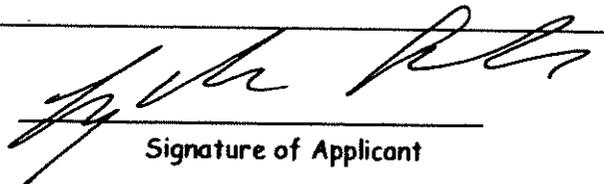
Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? no.



Signature of Property Owner

5-18-11

Date



Signature of Applicant

5-18-11

Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-1584



# TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930  
(415) 453-1584 / FAX (415) 453-1618

November 15, 2010

Lydia Kindheart  
Lydia's Kitchen  
31 Bolinas Road  
Fairfax, CA. 94930

## NOTICE OF DESIGN REVIEW BOARD ACTION

### RE: 31 Bolinas Road; Application # 10-24

Request for design review of exterior color changes and construction of a bench, partial wall and mailbox enclosure outside an existing commercial building; Assessor's Parcel No. 002-122-37; Central Commercial CC Zone; Lydia Kindheart, applicant/business owner; Brad Schwan, owner; CEQA categorically exempt, § 15301(a).

Dear Ms. Kindheart,

At its meeting on November 10, 2010, the Fairfax Design Review Board approved the above referenced application subject to the following conditions of approval:

1. The applicants must erect a directional sign directing patrons of the restaurant and other businesses in the complex to the private parking lot.
2. The parking lot must be restored for use by the existing businesses. Failure to do so may result in the Use Permit being revisited in front of the Planning Commission.
3. The applicants must obtain permit approval from PG & E for the area of wall enclosing the gas meter. Evidence that permit approval has been obtained shall be provided to the Town of Fairfax. Contact Ron Jodsas of PG & E at [RDJ1@pge.com](mailto:RDJ1@pge.com) or call (877) 743-7782.

If you have any questions please do not hesitate to contact the Fairfax Department of Planning and Building Services.

Sincerely,

Linda Neal  
Senior Planner



Ross Valley Fire Department  
777 San Anselmo Avenue, San Anselmo, CA 94960

Roger Meagor  
FIRE CHIEF

# Memo

**To:** Linda Neal, Sr. Planner

**From:** Rob Bastianon, Fire Inspector 

**Date:** 7/6/2011

**Re:** 31 Bolinas, Fairfax

---

Ross Valley Fire Department has reviewed the planning application for the addition of outdoor dining. No additional Fire Code requirements at this time, additional review will be required when construction plans are submitted for permit.

EXHIBIT #     C    

Committed to the protection of life, property, and environment.  
SAN ANSELMO • FAIRFAX • SLEEPY HOLLOW

*Attn: Stuart*

**TOWN OF FAIRFAX  
DEPARTMENT OF PLANNING AND BUILDING SERVICES**

142 Bolinas Road, Fairfax, California 94930  
Phone (415) 453-1584 FAX (415) 453-1618

**LETTER OF TRANSMITTAL**

**From: Fairfax Planning and Building Services Department**

Date: June 22, 2011

*OK CM 6/27/11*

- To:  Town Engineer       Fairfax Police Dept.       Marin County Open Space Dist.  
 Town Attorney       Sanitary Dist. 1       Other – Building Official  
 MMWD       Public Works Dept.      PG & E  
 Ross Valley Fire       Marin County Health Dept.

Address and Parcel No: 31 Bolinas Road; Lydia's Lovin Foods Restaurant; Assessor's Parcel No. 002-122-01

Project Description: Construction of a 441 square foot outdoor dining patio for customers

These plans are being transmitted for review either: a) prior to public hearings on discretionary permits before the Fairfax Design Review Board and Planning Commission; or, for review prior to issuance of a building permit. Please provide your comments on the completeness and adequacy of the submittal for your agencies reviewing purposes within 10 days.

1	Received 6/15/11	Preliminary plans and additional supplemental information

**REMARKS** \_\_\_\_\_

Please respond by July 4, 2011. Thanks

If you have any questions please contact: Linda Neal, Senior Planner



**MARIN MUNICIPAL  
WATER DISTRICT**

TOWN OF FAIRFAX

JUN 30 2011

RECEIVED

220 Nellen Avenue Corte Madera CA 94925-1169  
www.marinwater.org

June 23, 2011  
Service No. 04205

Linda Neal  
Town of Fairfax Planning Dept  
142 Bolinas Rd  
Fairfax CA 94930

**RE: WATER AVAILABILITY – Outdoor Dining Patio**  
Assessor's Parcel No.: 002-122-34  
Location: Bolinas Rd., Fairfax

Dear Ms. Neal:

The above referenced parcel is not currently being served. The District has no objection to the proposed outdoor dining patio served from the adjacent restaurant at 31 Bolinas Road provided ~~no water using fixtures are installed on the parcel.~~ Please note, the additional seating for the restaurant will increase water demand. Therefore, the purchase of additional water entitlement may be required.

Compliance with the District's Water Conservation Ordinance 421 is a condition of water service. Plans shall be submitted, and reviewed to confirm compliance. The ordinance requires a landscape plan, an irrigation plan, and a grading plan. Any questions regarding this ordinance should be directed to the plan review program manager at (415) 945-1497. You can also find information about the ordinance online at [www.marinwater.org](http://www.marinwater.org).

Should backflow protection be required, said protection shall be installed as a condition of water service. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1559.

If you have any questions regarding this matter, please contact me at (415) 945-1531.

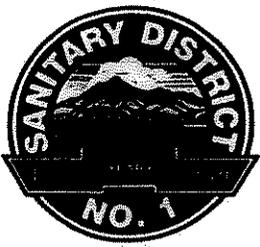
Very truly yours,

A handwritten signature in black ink, appearing to read "Joe Eischens".

Joseph Eischens  
Engineering Technician

JE:dh

cc: Town of Fairfax Building Dept



# ROSS VALLEY SANITARY DISTRICT

*Serving the Greater Ross Valley Area for 111 Years*

2960 Kerner Boulevard San Rafael, Ca 94901

Ph: 415.259.2949 Fax: 415.460.2149

WWW.RVSD.ORG

Brett N. Richards ~ General Manager

Directors: Marcia Jonson, President ~ Peter Wm Sullivan, M.D., Secretary ~ Patrick Guasco, Treasurer ~ Pam Meigs ~ Frank Egger

June 28, 2011

Linda Neal  
Town of Fairfax  
Department of Planning and Building Services  
142 Bolinas Road, Fairfax, CA. 94930

RECEIVED  
JUL - 5 2011  
TOWN OF FAIRFAX

**SUBJECT: 31 Bolinas Rd; Lydia's Lovin Foods Restaurant; APN. No. 002-122-01**

Dear Linda:

We are in receipt of your transmittal letter dated June 22, 2011 concerning the above-referenced project. This project has no impact on the public sanitary sewer. Therefore, Sanitary District No. 1 has no objection to this project.

If you need further information regarding this matter, please contact the office.

Sincerely,

Randell Y. Ishii, M.S., P.E.  
District Engineer

## Parking

The Town Parking Requirements set forth in Chapter 17.28 are as follows for the various uses proposed (Exhibit D):

Retail	3 spaces for the first 500 s.f. and 1 space for each additional 500 s.f. thereafter [Town Code § 17.28.030(F)]
Office	3 spaces for the first 500 s.f. and 1 space for each additional 500 s.f. thereafter [Town Code § 17.28.030(G)]
Restaurants	1 space for each 200 sq. ft. of gross floor area [Town Code § 17.28.030(H)]
Wholesale & Storage	1 space for each 2 employees on the busiest shift [Town Code § 17.28.030(K)]

The use includes the following square footages and parking requirements based on the above code sections:

Retail		
Office	180 s.f.	3 spaces
Restaurant (including "dinner and a movie" theater area )	1,273.5 s.f.	5 spaces
	1,320 s.f.	8 spaces
2,233 s.f. wholesale/storage (including refrigerated storage) with 10 to 14 employees per busiest shift		7 spaces
	Total number of spaces required	<u>23 spaces required</u>

Once the parking lot is re-stripped in the configuration shown on the site plan the parking lot will provide conforming parking for 24 vehicles. Therefore, the parking complies with the Fairfax Parking Ordinance.

Please note that the square footage calculations prepared by Staff differ from those shown on the floor plan because the applicant was unaware that hallways, bathrooms, outdoor storage areas in the rear roofed area and walk-in refrigeration units needed to be included in the square footage.

### Compatibility with Surrounding Uses

The proposed mixed use of the existing buildings will not conflict with the surrounding retail and residential uses. However, the "diner and a movie" outdoor theater is proposed immediately adjacent to the residences on Dominga Avenue. The applicant proposes locating the movie screen in the center of the open-sided, roofed area and utilizing a Theater sized surround sound system to present the movies. To minimize the noise impact on the neighbors the project incorporates the use of 2 layers of hanging sound baffle material that can be raised and lowered as needed. The applicant proposes to eventually construct a cobb wall to enclose the rear roofed area further minimizing the noise impacts of event held there. The current proposal indicates that the hours of the "dinner and a movie" theater will be from 6:30 P.M. to 12:00 P.M. The commission will want to consider whether they would like to further restrict the hours and/or days that the "dinner and a movie" portion of the business operates.

Commissioner Ramsay said that the project had been designed with care.

M/s, LaMotte/Lacques, Motion to approve Application # 11-14, a request for a use permit to construct a 216 square foot bathroom addition onto a 3,021 square foot, single-family residence at 15 Deer Park Drive.

AYES: All

Vice-Chair Hamilton read the appeal rights.

2. 31 Bolinas Road; Application # 11-15: Use permit for a 750 square foot, outdoor eating area adjacent to Lydia's lovin Foods Restaurant; Assessor's Parcel No. 002-122-01 and 02 and 002-122-34 and 37; Central Commercial CC Zone District; Lydia Kindheart, applicant/ business owner; Brad Schwan, property owner; CEQA category exempt, §15301(e)

Commissioner Hall recused himself because he owned property within 500 square feet of the applicant's proposal and Senior Planner Neal presented the staff report. She discussed the outdoor eating area and noted that the seating would be ADA compliant. She said that a Use Permit would be necessary for reasons she explained, which included that the principal use would not be conducted entirely within a building. Ms. Neal noted that the use permit would be subject to noise conditions and could be revoked if any of the conditions of approval were broken. She said that a parking variance had not been considered necessary because there were sufficient parking bays, and she recommended that the portion of the staff report that referred to a parking variance be struck. She discussed two letters from concerned neighbors.

In response to Commissioner O'Neil, Ms. Neal discussed other venues with outdoor seating that abutted residential neighborhoods.

In response to Vice-Chair Hamilton, Ms. Neal noted that setbacks for outdoor seating areas had not been addressed by the Code. They discussed noise complaints in relation to the revocable use permit.

Commissioner LaMotte and Ms. Neal discussed additional conditions of approval that had been submitted by a neighbor. She confirmed that the Noise Ordinance addressed noise issues separately from the use permit.

Ms. Neal and Commissioner LaMotte also discussed a statement from the Water District, when Ms. Neal noted that either a permit would be required or confirmation from the Water District that they approved the project.

Vice-Chair Hamilton discussed the garbage containers in relation to a neighbor's complaint with Ms. Neal, who noted that the use permit could be denied if it was thought that the problem would be exacerbated.

Commissioner O'Neil and Ms. Neal discussed other conditions a resident had brought up in e-mail correspondence.

The Applicant, Lydia Kindheart, explained that she wished to have a patio area in order to increase her business. She discussed the three large events that had occurred during an 8-year period where music had been played and she said that she had addressed complaints. She discussed the problems regarding the garbage containers which she said had lids that her staff sometimes forgot to close. Ms. Kindheart noted that she had little control over early deliveries because her business was just one which the trucks delivered to on their route. However, she said that the trucks did not back up into her property and thus there was no noise from "back-up beeps".

Ms. Kindheart discussed hours of operation and said that she would like the patio area to maintain the same operating hours as the restaurant. She said that they would not be serving alcohol or playing music.

Ms. Kindheart discussed landscaping with Commissioner LaMotte, which Ms. Neal noted would be reviewed by the Design Review board.

Commissioner O'Neil and Ms. Kindheart discussed the garbage problem and the amount of materials kept on that section of the property. Commissioner O'Neil said that the smell had been offensive when he had visited the site and they discussed enclosure options. Ms. Kindheart said that she composts.

Vice-Chair Hamilton noted that the trash containers took up parking spaces and Ms. Neal said that it rendered the number of usable spaces shown on the plans to be inaccurate and that a parking variance might therefore be needed.

Vice-Chair Hamilton suggested that a parking variance might be an option in exchange for an enclosed compost and waste area, to which there was general agreement.

Commissioner LaMotte and Ms. Neal discussed the directional sign, which was acknowledged to look hand-made. They discussed the conditions of a previous permit which appeared not to have been effectively adhered to.

Vice-Chair Hamilton opened the public comment period.

John Berkus, 47 Bolinas Road, discussed his concerns with early morning deliveries and a dumpster being located close to his property line, in addition to other noise issues.

In response to Commissioner O'Neil, Ms. Neal discussed the residential and commercial zone which the restaurant occupied.

Vice-Chair Hamilton closed the public comment period.

The applicant, Vice-Chair Hamilton and Commissioner LaMotte discussed the early morning deliveries. Commissioner LaMotte said that she would find it difficult to approve a project that would exacerbate an existing noise problem. Ms. Kindheart explained why it might not be possible to change the delivery times but she discussed the steps that had been taken to ameliorate the problem of noise caused by truck deliveries. Furthermore, she noted that other people use the parking lot and caused noise.

General discussion took place with the applicant on the feasibility of shortening the opening hours of the patio and Ms. Kindheart said that it would not be reasonable to have different hours of operation for the patio and restaurant. Furthermore, she noted that another establishment close to her own operated longer hours and created more noise.

Commissioner Ramsay noted that downtown residents needed to accept that the environment was not peaceful and he said that he was frequently awoken by trash vehicles.

Commissioner Lacques said that it was tough to balance the concerns of the neighbors with the necessary business hours. He said that a closing time of 9pm throughout the week would not be unreasonable, particularly for the patio business.

M/s, O'Neil/Lacques, Motion to continue Application # 11-15, use permit for a 750 square foot, outdoor eating area adjacent to Lydia's lovin Foods Restaurant at 31 Bolinas Road to the August 2011 meeting, in order that staff could investigate the hours of operation of other restaurant establishments with outdoor dining areas and for the applicant to investigate a suitable trash enclosure.

AYES: All

## **DISCUSSION ITEMS**

Commissioner O'Neil led a discussion on landscaping improvements at the convenience store at 150 Bolinas Road. There was general agreement that the landscaping had not been sufficiently upgraded to meet the conditions of approval.

Senior Planner Neal noted that police reports had not been generated due to complaints or disturbance.

Commissioner O'Neil discussed his concerns that alcohol was being be sold after midnight.

Commissioner Ramsay announced that he would be retiring from the Planning Commission and moving out of town.

Following discussion, it was agreed that the next Planning Commission meeting would take place on August 25, 2011 to ensure the commissioners would have a quorum.



TOWN OF FAIRFAX

SEP 06 2011

RECEIVED

Town of Fairfax  
Planning Commission  
142 Bolinas Rd.  
Fairfax, CA 94930  
August 29, 2011

Re: Parking Variance

Dear Planning Commission,

Lydia's Organics will not be applying for a parking variance because we have addressed the garbage/compost problem without losing any parking. The garbage and compost are to be located against the middle of the north wall of the building at the farthest point from both the neighbors and the proposed patio area. The compost receptacles are to be tightly sealed containers and the garbage bin is the same lidded bin, and located at least 50 feet from the neighbors; therefore, mitigating any odor issues. Lastly, we would like to point out that we are one of a very few business in the downtown area being required to comply with parking regulations. Very few downtown businesses have adequate parking and most have none at all.

Thank you for your consideration.

Sincerely,

Lydia Kindheart

EXHIBIT #     B



Aug 29, 2011  
Town of Fairfax  
Planning Commission  
142 Bolinas Rd.  
Fairfax, CA 94930

Dear Planning Commission,

Here are the measures that we have taken to mitigate the delivery noise issues:

- Asked our vendors to change delivery times to later in the day
- Re-routed delivery trucks so that they deliver on the street and hand push the pallets up the driveway instead of delivering at our service entrance. That way, the truck is not backing up into the parking lot and beeping while in reverse, bothering the neighbors .
- Spoken to the delivery people asking them to be conscious of the neighbors:
  1. not slamming down the lift gate
  2. not stopping and restarting the engine
  3. getting out of the truck without slamming the door
  4. not playing the radio loudly
- On garbage day, the garbage bins are rolled to the front part of parking lot so that the truck does not pull in to the parking lot, minimizing noise.

Here are additional measures we have taken to respect the privacy and needs of the neighbors:

- Posted bilingual signs asking employees to respect neighbors and keep their voices down.
- Required employees to park on opposite side of parking lot from neighbors when possible.
- Addressed complaints and emails from the neighbors promptly and remedied when possible.
- Spoken to our staff about neighbors' requests as issues arise.

I am doing my best to be a good neighbor and am we can coexist in the commercial district of Fairfax.

Thank you for your time.

Sincerely yours,

Lydia Kindheart

8/30/2011



Aug 29, 2011  
Town of Fairfax  
Planning Commission  
142 Bolinas Rd.  
Fairfax, CA 94930

Dear Fairfax Planning Commission,

In regards to the delivery schedule for Lydia's Organics, we are writing to inform you that we are unable to change the time of our deliveries. We run on a set schedule and Lydia's Organics is only one of many early morning stops on our route. It is necessary for us to operate in the early mornings in order to avoid traffic issues and other complications with our large delivery trucks. Similarly, we need deliver to stores and restaurants in the early morning prior to them opening for business.

Thank you for understanding.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Stewart". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Patrick Stewart  
Sales Manager

2101 Jerrold Ave., Suite 100, San Francisco, CA 94124  
Phone: (415) 824-7419 Fax: (415) 824-7819

## Linda Neal

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**From:** John Griffiths [johnpgriffiths@gmail.com]  
**Sent:** Monday, September 05, 2011 8:50 PM  
**To:** Lydia Kindheart  
**Cc:** Linda Neal; Jim Moore; anniejmorris@gmail.com  
**Subject:** Re: Multiple Disturbances From Early Morning Deliveries

Thanks for the email.

The car was dropping the person off. We were also woken up by a particularly loud car this car last night at 4 am dropping someone off. I was wearing ear plugs and we have the window nearly closed, yet it still woke us up.

John

On Sep 5, 2011, at 2:16 PM, "Lydia Kindheart" <[lydia@lydiasorganics.com](mailto:lydia@lydiasorganics.com)> wrote:

> Hi,  
>  
> I just saw your email.  
> I called the company its labor day to track down if there was anything  
> unusual, than what they usually do.  
> what was the car doing other than driving & dropping off someone?  
>  
> Lydia Kindheart  
>  
> Lydia's Organics, Lydia's Lovin' Foods, Lydia's Kitchen  
>  
> and the soon to be opened Sunflower Center  
>  
> tel: 415-258-9678 fax: 415-258-9623  
>  
> Lovin' Foods for the Body, Mind & Soul  
>  
>  
> ~ Please consider the environment before printing this e-mail ~  
>  
> This e-mail contains proprietary and confidential material for the  
> sole use of the intended recipient. Any review, use, distribution or  
> disclosure by others without the permission of the sender is strictly  
> prohibited. If you are not the intended recipient (or authorized to  
> receive for the recipient), please contact the sender by reply e-mail  
> and delete all copies of this message.  
>  
>  
> -----Original Message-----  
> From: John Griffiths [<mailto:johnpgriffiths@gmail.com>]  
> Sent: Saturday, September 03, 2011 7:27 AM  
> To: Lydia Kindheart  
> Cc: Linda Neal; [anniejmorris@gmail.com](mailto:anniejmorris@gmail.com); Jim Moore  
> Subject: Multiple Disturbances From Early Morning Deliveries  
>  
> Lydia

>  
> Last night Annie and myself were woken by a particularly load ( trucks  
> being dragged across yards etc) delivery at 4.45am this morning. Then  
> at 5.45 am our 4 year old Katie was woken by you staff arriving for  
> work via car and she will not go back to sleep  
>  
>  
> Because of this the kids ( and Annie and myself) will be entering the  
> holiday weekend being tired and cranky.  
>  
> I implore you on the behalf our children and the other neighbors  
> disturbed, to enforce effective noise control measures.  
>  
> I am home all weekend if you wish to discuss your proposals to prevent  
> these events.  
>  
> Regards  
>  
> John  
>  
> 415 652 4833  
>  
>  
>  
>  
>  
>  
>  
>

**Linda Neal**

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**From:** John Griffiths [johnpgriffiths@gmail.com]  
**Sent:** Saturday, September 03, 2011 7:27 AM  
**To:** Lydia Kindheart  
**Cc:** Linda Neal; anniejmorris@gmail.com; Jim Moore  
**Subject:** Multiple Disturbances From Early Morning Deliveries

Lydia

Last night Annie and myself were woken by a particularly load ( trucks being dragged across yards etc) delivery at 4.45am this morning. Then at 5.45 am our 4 year old Katie was woken by you staff arriving for work via car and she will not go back to sleep

Because of this the kids ( and Annie and myself) will be entering the holiday weekend being tired and cranky.

I implore you on the behalf our children and the other neighbors disturbed, to enforce effective noise control measures.

I am home all weekend if you wish to discuss your proposals to prevent these events.

Regards

John

415 652 4833