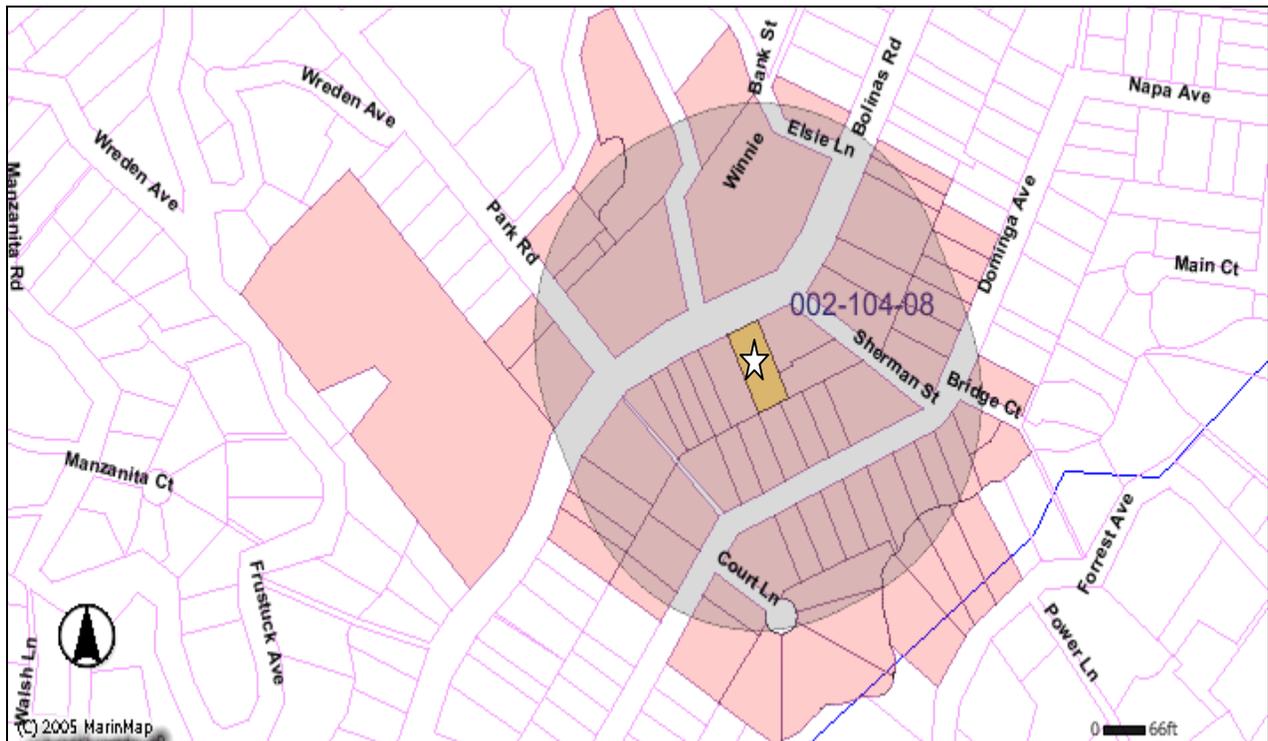


# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

**TO:** Planning Commission  
**DATE:** June 20, 2013  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Senior Planner  
**PROJECT:** Outdoor seating for a wine bar/restaurant  
**ACTION:** Use Permit and Design Review; Application # 13-14  
**APPLICANT:** Dominic Phillips  
**OWNER:** Jennie Arconti Trust  
**LOCATION:** 123 Bolinas Road; Assessor's Parcel No. 002-104-08  
**ZONING:** Central Commercial CC Zone  
**CEQA STATUS:** Categorically exempt, § 15301(a)



### 123 BOLINAS ROAD

## **BACKGROUND**

Currently existing on the site is a 1,970sf wine bar/restaurant space, three residential living units, and storage shed. The structures were constructed in 1916 according to the Marin County Tax Assessor's Records and the site is zoned Central Commercial CC. The level site is 5,972sf in size and 50ft wide. There are currently 3 tandem, on site, parking spaces which are used by the residents of the living units located at the rear of the property.

The Commission approved a Parking Variance to allow the operation of a restaurant in this location on February 19, 2009.

## **DISCUSSION**

The applicant is requesting a Use Permit and Design Review to provide outdoor seating along the property frontage by:

1. Removing the planter area between the front windows and the bench that runs the width of the building.
2. Relocating the bench against the building.
3. Fixing four (4) small wooden table tops made of cedar with a natural finish to match the table inside. The bench seating will provide outdoor seating for eight (8) persons. No movable furniture is proposed.
4. Separating the outdoor seating area from the sidewalk travel path with cedar fencing that will remain in place at night. Each pillar of the fence will include a small succulent planter that will be plated with the succulents from the existing planter.

The property is located in the Central Commercial CC Zone District which lists restaurants as a permitted use as long as they are operated entirely within a building [Town Code § 17.100.040(A)]. Town Code § 17.100.050(A) requires any business to obtain a use permit prior to expanding their operation outside a building. Therefore, providing outdoor seating along the frontage of the wine bar at 123 Bolinas Road requires the approval of a Use Permit.

The purpose of the Use Permit process is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations or only if designed in a particular way. In considering a Use Permit application, the Commission shall give due regards to the nature and condition of all adjacent uses and to the public health safety and welfare.

Another restaurant with similar hours is located to the east of the site while two residential units are located to the west and are separated from the wine/bar restaurant by a driveway. The small number of tables that are proposed will help keep the exterior noise to a minimum.

The business hours are limited with the business only being open from 4:00 pm to 10:00 pm, Tuesday through Thursday, 4:00 pm through 12:00 midnight on Friday and Saturday and 4:00 pm to 9:00 pm on Sundays. The limited hours and small number of outdoor tables will help minimize the impact of the outdoor seating on the neighboring residential properties.

### **Other Agency/Department Comments**

Building Department – any barrier to travel must maintain a minimum sidewalk clearance of 36 inches. That is the clearance that must be maintained from the edge of the bench to the edge of the sidewalk, not to the sidewalk tree trunks.

Marin Municipal Water District – Landscape plans shall comply with outdoor requirements of District Code Title 13, Water Conservation and backflow protection shall be installed and inspected by the District if required.

### **RECOMMENDATION**

Move to approve Use Permit application # 13-14 based on the following findings and subject to the following conditions.

### **Recommended Findings**

1. Other restaurants in Town have approved Use Permits for outdoor seating including the neighboring Iron Springs Brewery and Good Earth Grocery store across the street. Therefore, the approval of this Use Permit will not be a grant of special privilege.
2. The hours of operation from 4:00 pm to 10:00 pm, Tuesday through Thursday, 4:00 pm through 12:00 midnight on Friday and Saturday and 4:00 pm to 9:00 pm on Sundays will not negatively impact any of the surrounding commercial enterprises and the limited number of tables will minimize the noise impact of the outdoor dining on the adjacent residential units.
3. No. outdoor activities are proposed for the area other than dining which will not cause excessive noise. 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.
4. The Town Code gives the Commission the authority to grant Use Permits for permitted uses that are not operated entirely within a building as long as the uses will not negatively impact the citizens or surrounding properties [Town Code § 17.100.050(A)]. A review of the proposed location, design of the outdoor furniture and hours of operation has resulted in the Commission determining the proposed outdoor eating area will not have a

significant negative impact on the Town and/or its citizens. Therefore, 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.

5. 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.
6. The proposed cedar fence and cedar tables will be of a quality consistent with other outdoor improvements found throughout Town and they meet the Design Review Criteria set forth in Town Code § 17.020.040.

### **Recommended Conditions**

1. 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, the planters, the ground and the pavement surfaces.
2. 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.
3. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc, comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board (when required).
4. The applicant or permit holder 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 Town Council, Planning Commission, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance permit or other land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permit holders duty to so defend, indemnify, and hold harmless shall be subject to the Town promptly notifying the applicant or permit holder.
5. Prior to utilizing the outdoor seating the applicant shall have the Building Official verify that the location of the cedar fencing maintains the required accessibility clearance of 36 inches.

## **ATTACHMENTS**

Exhibit A – applicant’s supplemental information

Exhibit B – Other Agency and Department comments