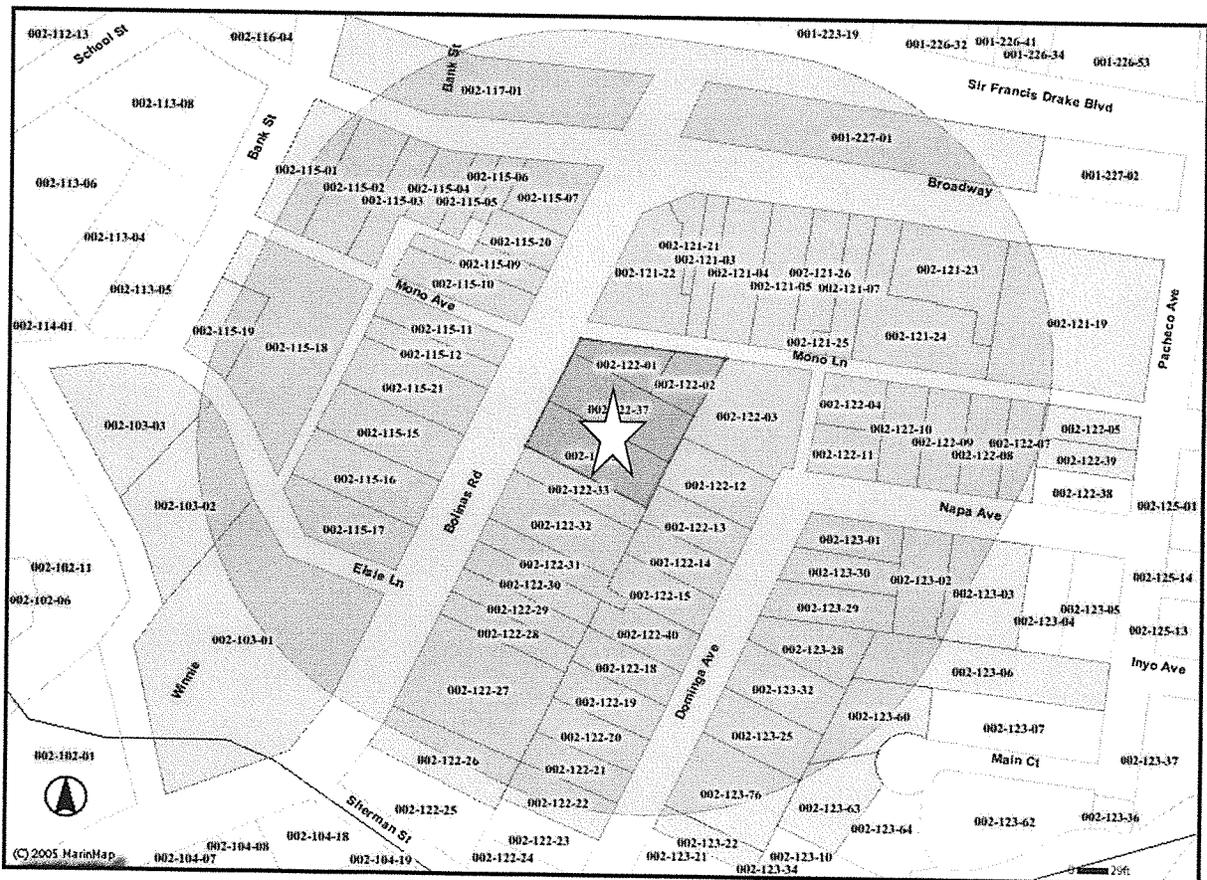


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: November 18, 2015
FROM: Jim Moore, Director of Planning and Building Services
LOCATION: 31 Bolinas Road, Suites A to E; Assessor's Parcel #'s 002-122-02, 34 and 37
ZONING: Central Commercial CC Zone District
PROJECT: Request for a modification of a previously approved Use Permit and Design Review approval to make minor exterior changes to the approved plans and amend the permitted use categories for an existing mixed use commercially zoned property currently being remodeled/expanded Assessor's Parcel No. 002-122-02, 34 and 37
ACTION: Use Permit Modification; Application 02-39
ARCHITECT: Fred Divine
OWNER: Brad Schwan
CEQA STATUS: Categorically exempt, § 15301(a)



31 Bolinas Road, Suites A thru E

BACKGROUND

The property owner was granted a Use Permit for a mixed use of the property in 2002: essentially allowing the previous tenant, Wildwoods Natural Foods, Use Permit to be taken over by Lydia's Lovin (raw) Foods. Lydia's was a raw food restaurant and wholesale raw food operation. At that same time in 2002, a culinary school with dinner services and movie uses were also approved - but never became operational.

After Lydia's Lovin (raw) Foods relocated out of Fairfax, a Use Permit modification was approved by the Commission in 2012 to allow an outdoor seating area for the restaurant space with 49 seats by an applicant that never completed remodeling the restaurant and never opened for business.

On May 21, 2015, the Commission modified the Use Permit for the buildings to allow a remodel/expansion of the structure comprising 31 Bolinas, approving a mixed use combination of Restaurant/Retail/Personal Service in the two front and the 1 middle space, a light industrial/retail/personal service use in the rear space adjacent to the parking lot and a live work space only in rear northern corner fronting on Mono Lane.

DISCUSSION

The applicant is now requesting (1) a Use Permit modification to "allow a more broad type of uses" in Spaces A thru E (including Space "D" which had previously been restricted to just "live-work" space), and (2) Design Review approval for exterior modifications. Therefore, the project requires the approval of the following discretionary permit:

Use Permit Modification

The purpose of the Central Commercial (CC) zone is to cater to and invite pedestrian traffic with continuous store frontages and a minimization of driveways, blank walls and other conflicts or deterrents to foot traffic (Town Code §17.100.010). The proposed changes of use require a Use Permit Modification because Mixed Use properties and outdoor uses, under the current code, require a Use Permit.

It appears that the proposed uses will bring people to the downtown core area where they will also be likely to purchase meals, visit the corner coffee shop, have their hair cut, etc. Likewise, the outdoor area and the retail components will invite passerby foot traffic. Therefore, staff believes that the proposed uses will perform similarly to the other already permitted uses.

Traffic Impact Permit

The use permit modification approved in May 2015 was granted without the need for a traffic impact permit because the Commission determined that the 1,947 square foot restaurant with outdoor seating for 56 and the 874 square foot retail personal service space did not meet the criteria for a traffic impact permit (Town Code § 17.056.050). The Commission, as recommended in the May staff report, relied on Town Code

section 17.056.050(3) agreeing to assess the projects impacts incrementally in order to aid the owner in getting a portion of the site finished and rented: and stipulated that the use of the “live/work” space for anything other than that use would/could trigger the requirement of a Traffic Study. The applicant in now requested that the “live/work space” (e.g., in the north-east corner) be used for either “Light Industrial, Retail, Personal Service, Exercise” and/or Live/work.

Therefore, the applicant (per §17.056.050 (C)) has provided a letter from W-Trans (Exhibit D) indicating that the range of uses as proposed fall below 100 additional trips over the historic previous use of the property - which would trigger the need for a Traffic Study and/or a Traffic Impact Permit. Please note: The Town’s Traffic Engineer performed a peer review of W-Trans analysis, and given the assumptions, concurs with the trip generation rate comparison.

Design Review

The proposed minor changes to the exterior of the building as articulated on the attached plans include:

- A door and window to the North Elevation (e.g. previous Live/Work Space);
- Additional windows (2) to the north-east elevation;
- A window to the south elevation near the sidewalk;
- A window to the upstairs office/apartment east elevation;
- Installation of a “backflow preventer” near the sidewalk on the south elevation;
- Relocation of the electrical service panels and gas meter; and
- Several (26) skylights.

Staff believes that these modifications are in keeping with the previous Design Review approval granted on May 21, 2015 – per Town Code §17.020.030(B).

Please note: Staff has spoken with the architect about “screening” the new air-conditioning units above Space E - so that they are not visible from Bolinas Road and suggest that the Commission confirm if that will be done.

Other Agency/Department Comments/Conditions

Ross Valley Fire Department

No new comments: approved the skylights.

Ross Valley Sanitary District

No new comments

Marin Municipal Water District

No new comments

RECOMMENDATION

Move to approve application 02-39 by adopting Resolution No. 15-37 setting forth the findings and conditions for approval.

ATTACHMENTS

Exhibit A – Revised Plans

Exhibit B – Applicant's supplemental information

Exhibit C – W-TRANS Trip Generation Study

Exhibit D – Resolution No. 15-37

October 26, 2015

Project Description
Use Permit Modification
Design Review Revisions
31 Bolinas Road

A use permit modification, design review, and parking variance were approved for this location on May 21, 2015. In the time afterwards, it has come to the attention of the property owner, that some of the anticipated uses for some of the building spaces were not included in the modified use permit. The property owner would like to modify the approved use permit to allow a more broad type of uses like exercise uses to be included in the property's use permit. Also during the course of construction, the owner has made changes such as window locations which are included in these revised sets of plans. A separate use permit application has been applied for the front "A" space along with the patio use.

Historically, the project site was the location of Wildwood Foods, a pioneering natural foods firm that used the property for a restaurant and extensive production facilities in the back. It was subsequently used in a similar way by Lydia's. Most recently another restaurant application was made for the same site that was not completed. The building was added to over the years primarily while it was Wildwood.

The owner is proposing to fully upgrade the building in essentially the same configuration as existed when he purchased the property and now. Some of the spaces were and still are large refrigerated boxes under a permanent roof structure. The owner is proposing to install new windows and walls to code, to seismically upgrade the entire building to code, to install fire sprinklers, to flood proof the exterior, to provide for ADA access and restrooms, to provide new electrical and plumbing, and to provide for flexible occupancies consistent with the prior use.

In preparing this submittal, town building and planning files were reviewed and a checklist prepared by planning (10/9/14) was the guideline for consistency of the application. While the building is being completely upgraded and the rear part of the building will now be accessible and more useful, very little significant change to the footprint and site access characteristics will occur.

Note: 29 Bolinas is on the same property but no changes are proposed to 29 Bolinas. However, tabulations may include 29 as it is part of the same parcel.

ATTACHMENT **B**



November 12, 2015

Mr. Brad Schwan
31 Bolinas Road
Fairfax, CA 94930

Trip Generation Study for 31 Bolinas Road

Dear Mr. Schwan;

W-Trans has completed an evaluation of the likely change in trip generating potential between existing uses at 31 Bolinas Road in the Town of Fairfax, and those proposed. This review was performed to address the project's potential trip generation in the context of §17.056.050 of the Town of Fairfax Municipal Code. In summary, this policy requires an applicant to obtain a traffic impact permit under various conditions, including "reuse of existing structures where the new use will generate 100 average daily trips (ADT) or more beyond that generated by the prior use." Based on staff interpretation of this policy, a reuse that generates *fewer than 100 ADT* compared with historical uses does not require a traffic impact permit. This purpose of this letter is to provide information that staff can use to address the applicability of the regulations, and demonstrate to the Planning Commission and Town Council that the standards relative to requiring a traffic impact permit do not apply to this project.

Trip Generation Rate Selection

Historical Use

It is understood that the historic use and existing building space, which totals 5,635 square feet including the 546 square foot space on the second floor, was previously permitted for use by Wildwood Natural Foods/Lydia's Kitchen. The facility had a restaurant in part of the space, and a processing facility in the remainder of the space. Consideration was given to several potential trip rates to capture this previous use. Since it contained restaurant space, both the "Quality Restaurant" and "High-Turnover Sit-Down Restaurant" land use categories, as defined in the ITE *Trip Generation Manual*, could potentially be appropriate. Based on our understanding of the restaurant, it appears that it was more of the high-turnover type of restaurant.

In addition to the restaurant the site was used to produce tofu, which was then packaged and shipped from the site. While this could be a manufacturing enterprise, the trip generation rates for a manufacturing use appear to be too low and somewhat unreasonable given the size and amount of equipment that would be typical in a manufacturing plant, compared to the kitchen equipment used for this product. It was anecdotally noted by Mr. Divine that because the tofu production required maximum use of the space, it is likely that there were multiple shifts, which results in a higher daily trip generation.

To arrive at an estimate that reflects both the trip generation of the restaurant as well as the activity associated with the production of tofu, the trip rates published by ITE in the *Trip Generation Manual* for a Quality Restaurant were deemed to be the most appropriate of the categories available. These rates are lower than those for a high-turnover restaurant, so are conservative for the restaurant space, but appear reasonable in capturing the sum total of activity at the site.

Proposed Uses

For the proposed uses consideration was given to the various types of tenants that might be attracted to the space. It is anticipated that Space A, which has 978 square feet of floor space, would be used for a high-turnover sit-down restaurant. To ensure that all of the potential use is accounted for, trips associated with the 48-seat patio outside Space A were included separately based on the rates for the same land use but based on seating rather than floor space.

For the remaining spaces a number of different uses were reviewed, including various service businesses like hair salons, weight training, and yoga studios, office uses, and retail uses. Of the potential uses for which there are published trip generation rates, the highest rate is for specialty retail space. This category is applicable to all sorts of retail, service and office uses such as might be found in a strip retail center or even along a downtown street where there are a variety of uses. This rate was applied to Spaces B, C, D and E as well as the common space where the stairwell and bathrooms are located. It is noted that while retail space typically draws some traffic from vehicles passing by, and thus generates fewer *net new* trips than uses such as a service where patrons make a use-specific trip to that destination, no deduction was taken to account for pass by trips in order to present a more conservative assessment.

Finally, the space on the second floor is expected to be used as a residence, and the rate for an apartment was applied to this space. Also, as a further conservative measure, no deduction was applied for the internal capture of trips between the apartment and the retail and restaurant uses on site, though this space is likely to be occupied by a tenant of one of the downstairs spaces.

Trip Generation Rate Comparison

Application of the various rates indicated above indicates that the historical use of 31 Bolinas Road would have been expected to generate an average of about 507 trip ends per day. Assuming predominantly retail uses, with one space used for a restaurant, the proposed conversion would be expected to generate an average of 545 trips daily, or 38 more trips than would have been occurring under the historical use.

The trip generations for the historical and proposed land uses are indicated in Table 1.

Table 1 – Trip Generation Summary			
Scenario	Units	Daily	
		Rate	Trips
Land Use			
Permitted Use			
High Quality Restaurant	5.635 ksf	89.95	507
Proposed Uses			
Space A – High-Turnover Restaurant	0.978 ksf	127.15	124
	48 seats	4.83	232
Spaces B through E, common space – Specialty Retail	4.111 ksf	44.32	182
Upstairs – Apartment	1 du	6.65	7
Sub-Total Proposed Uses			545
Total New Trips (Proposed Use minus Permitted Use)			38

Note: du = dwelling unit

The project could generate an additional 61 daily trips that without exceeding the Town's 100 daily trip threshold. Review indicates that use of up to 735 square feet for restaurant space in lieu of specialty retail would generate 61 more daily trips. It is noted that this would be the same kind of high-turnover sit down restaurant as assumed above; a coffee shop is specifically excluded from this discussion as this use has a substantially higher trip generation.

Conclusion

Because the change in uses from quality restaurant and tofu production to high turnover restaurant and specialty retail would be expected to generate only 38 additional trips on a daily basis, a traffic impact permit should not be required under §17.056.050 of the Town of Fairfax Municipal Code.

We hope the above provides the information needed by the Town to consider your proposal. Thank you for giving us the opportunity to provide these services.

Sincerely,



Dalene J. Whitlock, PE, PTOE
Principal

DJW/djw/FAI019.L1

Copy: Mr. Fred Divine (via email)



RESOLUTION NO. 15-37

A Resolution of the Fairfax Planning Commission Approving a Modification of the Use Permit 02-39 to Allow the Remodel and Addition of the Commercial Complex at 31 Bolinas Road to a Allow: a Combination of Restaurant/Retail/Personal Service in the Two Front and One Middle Space, Light Industrial/Retail/Personal Service in the Rear Space immediately Adjacent the Parking Lot and a Light Industrial/Retail/Personal Service/Live Work space in the Rear Northern Corner on the lot fronting Mono Lane.

WHEREAS, the Town of Fairfax has received an application to modify the Use Permit modification and Design Review permits approved on May 21, 2015 to expand the permitted types of uses and make minor changes to the approved exterior of the building including adding additional windows, skylights, a new door at the northeast corner of the new building addition and a fire sprinkler backflow preventer; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Use Permit Modification; and

WHEREAS, based on the plans and supplemental information provided by the applicant, a written statement provided by the other tenant of the building as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary Use Permit Modification and Parking Variance.

WHEREAS, the Commission has made the following findings:

The proposal complies Fairfax General Plan Goals and Objectives as follows:

Town Center Element:

Policy TC-1.1.1: New and/or renewed development in the Town Center Planning Area shall preserve and enhance the village character and pedestrian scale of the downtown area. Large, highly visible parking lots characteristic of strip shopping centers are inconsistent with village character.

Policy TC-2.1.1: New and/or renewed development in the Town Center Planning Area should be compatible with the architectural character of the downtown in terms of height, design treatment, colors, textures, and materials. Future buildings constructed in the downtown area shall be within the vertical form of the existing buildings that they might replace.

Policy TC-3.1.1: Mixed-use development is allowed in the Town Center Planning Area under Central Commercial zoning. The Town Center Plan, when created, shall be consistent with this zoning.

The proposal complies with the Zoning Ordinance as follows:

The proposal complies with Town Code § 17.056.050; where a project requires a traffic study when it either (a) creates a structure that will generate more than 100 Average Daily Trips, or (b) has a floor area of 5,000 square feet or more.

The proposal substantially complies the Town Code § 17.100.110: which indicates that 1 parking space is required for every 200 square feet of gross floor area for this site and 1 large, 12 foot by 45 foot loading space; because (a) a loading space has informally, historically, occurred in the parking lot over time, and (b) a parking variance is no longer required since two of the suites previously approved for a high traffic generating restaurant are being replaced with the lower parking generating use of a power weight lifting.

The proposal seeks a Use Permit Modification per Town Code § 17.100.050(F), (G) and (H) because: (a) Mixed Use properties, under the current code, requires a Use Permit.

The proposal seeks design review approval for new construction in the Central Commercial Zone District per Town Code § 17.020.030(B).

The proposal complies with the setback requirements for commercial structures that abut residentially zoned neighborhoods per Town Code § 17.100.090

Use Permit Findings:

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 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.

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.

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.

Design Review Findings:

Section 17.020.040 Design Review Criteria

The proposed development creates a well composed design, harmoniously related to other facilities in the immediate area and to the total setting as seen from hills and other key vantage points in the community.

The proposed development is of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area.

The proposed development conforms with the design of parking and off-street loading areas set forth in this title.

Sufficient variety exists in the design of the structure and grounds to avoid monotony in external appearance.

The size and design of the structure is in proportion to its building site and it has a balance and unity among its external features so as to present a harmonious appearance.

The design of the structure conforms to the general character of other structures in vicinity insofar as the character can be ascertained and is found to be architecturally desirable.

The on-site parking is easily accessible and its use will not cause traffic problems on adjacent Bolinas Road.

In the case of any commercial or industrial structure, the board shall consider its proximity to any residential district and shall consider the effect of the proposed structure upon the character and value of the adjacent residential district area.

The design review board may recommend design guidelines to the planning commission and town council for adoption in order to further the objectives of this section and to illustrate design criteria.

Parking/Loading/Aisle Width Variance Findings:

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.

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.

Granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of this title.

Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.

The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.

The strict application of this title would result in excessive or unreasonable hardship.

The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following 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, shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board or staff as required.
4. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but

not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly.

5. The project final inspection and issuance of the occupancy permit shall not occur until all the building improvements and parking improvements and sign off's have been received from all agencies with jurisdiction over the project.
6. The applicant shall continue to comply with the original conditions of approval for the Use Permit - to sign and notarize an affidavit stating that if/when the incremental use of the commercial spaces at 31 Bolinas Road result in the number of vehicle trips accessing the site every day reaching an amount that would make the total use of the site subject to the Traffic Impact Ordinance he agrees to the following:
 - a) To allow the Town to contract with a traffic engineering to prepare a Traffic Impact Permit (TIP) study to be paid for by the applicant prior to any other use of the live-work space.
 - b) The Trip study shall provide all the information required in Town Code §17.30.070.
 - c) The methodology for the TIP study shall be subject to approval by both the Planning Commission and the Town Council in accordance with Town Code § 17.30.070(F).
 - d) If questions arrive as to whether or not the amount of traffic generated by the multiuse buildings has reached an amount that will require a Traffic Impact Permit, the burden shall be upon the applicant to demonstrate to both the Planning Commission and the Town Council that the traffic impact standards do not apply [Town Code § 17.30.050(C)].
 - e) The applicant agrees to comply with any mitigation measures recommended by a Traffic Impact Study.
7. There shall be no storage of any materials, supplies for the mixed-use development nor long term storage for any vehicles/wheeled trailers not being used actively by one of the on-site businesses.

8. Should the Town prevail in any court action brought by it to enforce the applicant's obligations in connection with modified Use Permit No. 02-39, the Town shall be entitled to an award of reasonable litigation costs, including but not limited to, attorney's fees.
9. Prior to opening any new businesses in the building the parking lot shall be restriped.
10. Failure to comply with the conditions for modified Use Permit # 02-39 as herein enumerated, may result in revocation or modification of the Use Permit by the Planning Commission, in accordance with Chapter 17.024 of the Fairfax Town Code (section 11.17.024.090, ground for revocation and 17.024.100, ground for modification).
11. All the landscaping and irrigation shall be installed prior to the project final inspection and issuance of certificate of occupancy. Prior to issuance of the building permit the applicant shall provide evidence of a landscaping bond, letter or credit or cash deposit to cover the cost of the installation. This amount shall be held for 18 months to ensure the landscaping becomes established.
12. New exterior lighting as shown on page A3 of the plans shall be replaced with fixtures that are shielded and directed down.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Use Permit Modification and Parking Aise Width Variance can occur without causing significant impacts on neighboring businesses or residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 18th day of November 2015, by the following vote:

AYES:

NOES:

ABSENT:

Chair, Phil Green

Attest:

Jim Moore, Director of Planning and Building Services

