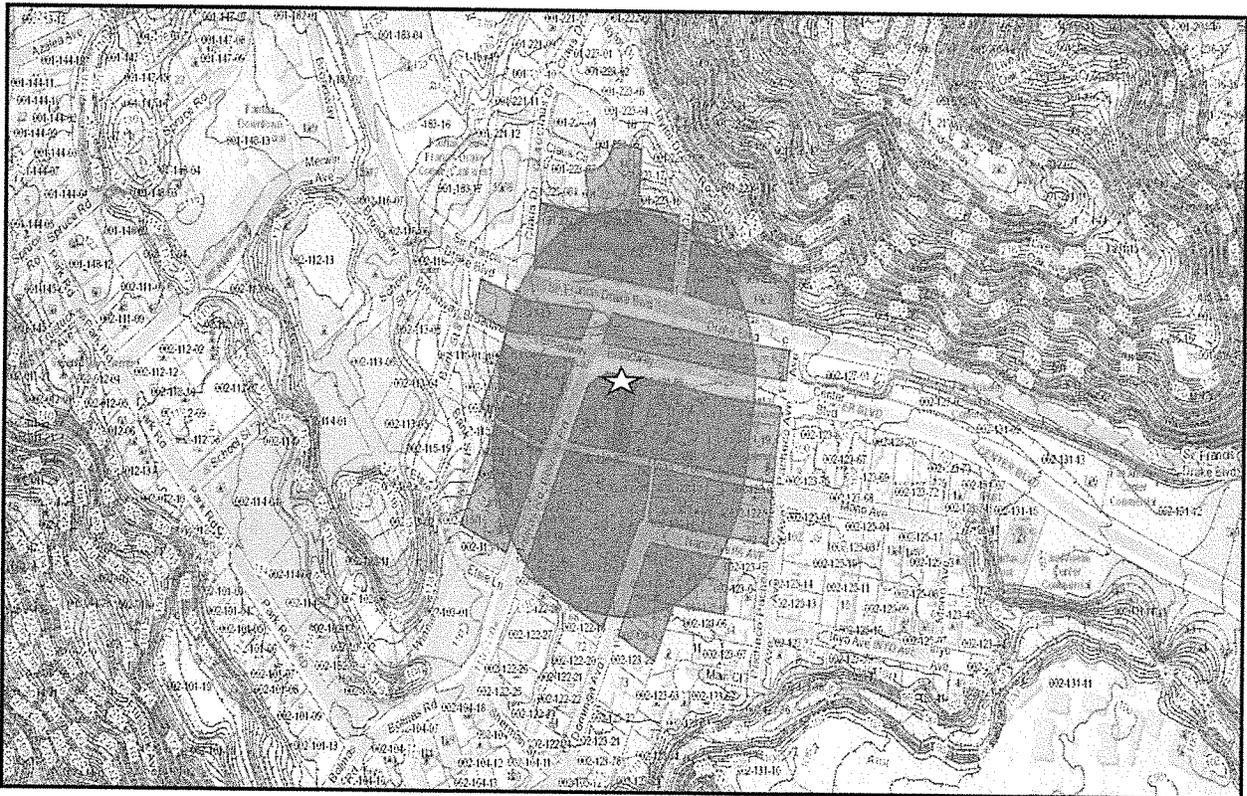


**STAFF REPORT**  
**Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** June 16, 2016  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Principal Planner  
**LOCATION:** 31 Bolinas Road; Assessor's Parcel Numbers 002-121-03 and 04  
**ZONING:** Central Commercial CC Zone  
**PROJECT:** Playing of live music inside and outside of the building  
**ACTION:** Modification of Use Permit; Application # 02-39  
**APPLICANT:** Brad Schwan  
**OWNER:** Same  
**CEQA STATUS:** Categorically exempt, § 15301



**31 BOLINAS ROAD**

## **BACKGROUND**

The site is made up of three parcels that house the structures at 29 and 31 Bolinas Road. A lot line adjustment approved for the site on March 17, 2016, adjusted the property lines so that 29 Bolinas Road is not located on its own parcel and the building at 31 Bolinas Road and the parking lot are located on a second parcel (Exhibit B – Lot Line Adjustment Map). The paperwork to make the lot line adjustment map final is working its way through the Marin County map recording process and has yet to be finalized, therefore, the Assessor has yet to issue the resulting parcels new parcel numbers and we are still using the old Assessor's Parcel Numbers for this application.

The previous restaurant/wholesale food packaging business that occupied the entirety of 31 Bolinas Road, Lydia's Lovin Foods, used outdoor refrigerators and a loading area that were located at the rear of 29 Bolinas Road with the use crossing the parcel lines.

The property owner was granted a Use Permit for a mixed use of the property in 2002 which allowed a raw food restaurant and wholesale raw food operation, a health center, and a retail natural products store. A culinary school and dinner and a movie operation were also approved at that time but never became operational on the site. 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 that included 49 seats. The applicant that received the 2012 approval never completed remodeling the restaurant and never opened for business.

On May 21, 2015, the Commission modified the Use Permit and issued a Design Review permit for the buildings at 31 Bolinas to allow a remodel/expansion of the structure 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 in the rear northern corner fronting on Mono Lane.

A second Use Permit Modification and Design Review Permit Modification were granted by the Commission on November 17, 2015, that approved minor exterior changes to the previously approved plans and to amend the permitted use categories for the mixed use commercially zoned property in the rear northern corner fronting on Mono Lane.

## **DISCUSSION**

The applicant is now requesting a modification of Conditional Use Permit (CUP) # 02-39 to include indoor and outdoor entertainment inside the front restaurant space, Suite B) and on the trellis covered patio. The applicant requests approval to have indoor music from 7:00 AM through 1:30 AM, and outdoors from 8:00 AM through 10:00 PM, seven days a week.

Town Code § 17.100.050(A) requires that a Use Permit be obtained for any principal use not conducted entirely within a building, § 17.100.050(C) requires a Use Permit for

theaters, nightclubs and entertainment establishments and § 17.100.050(I) requires a CUP for businesses that entertain customers by musicians. Therefore, having live entertainment inside and outside of the building requires a modification of the original use permit.

The purpose of the Conditional Use Permit process is to allow the property integration into Fairfax of uses which may be suitable only in certain locations in the Town, or in a zone, or only if the uses are designed or laid out on the site in a particular manner.

Noise pollution is a growing concern in downtown Fairfax although the police chief has indicated that most of the noise complaints seem to come from the same group of people. Typically, the noise complaints are not about noise that has reached a level that violates the Noise Ordinance maximum limits [Town Code Chapter 8.20, section 8.20.050(B)(1) "Exterior Noise Limits" table for Zone C, Commercial]. This type of conflict is typical in a community where the Commercial zones are either directly adjacent to residential zoned neighborhoods and/or where the Commercial Zones also have residential units.

Allowing outdoor music would certainly increase the noise levels in the Town Center. Depending on the number of Conditional Use Permits granted by the Commission for outdoor music in the future, that level could reach one that violates the 60 decibel noise limit set forth by the Town Code for the downtown commercial District. However, the businesses that have available outdoor areas large enough to accommodate outdoor music are limited. The following locations have rear or side yard or patio areas where live music could be staged – 19 Broadway, 23 Broadway (previously the Sleeping Lady), 33 Broadway (Fairfix Café) and 31 Bolinas Road (previously Lydia's Lovin Foods).

It is difficult to pre-determine, the number of permits for outdoor music and resultant noise levels, that would result in outdoor noise levels exceeding those permitted in the Noise Ordinance. The Commission can approve this Conditional Use Permit and subsequent Conditional Use Permits with the knowledge that Use Permits are revocable. If noise levels for outdoor music exceed the Noise Ordinance limits, the Use Permits can be revoked and/or modified to only allow indoor music going forward. The Commission could also determine that outdoor music has no place in the Central Commercial Zone District due to the close proximity of residential uses.

Note: Recently when the Town Council reviewed the only existing Conditional Use Permit for outdoor entertainment at Deer Park Villa, the Council discussed the fact that due to increased traffic and other noise sources, there are areas of Town, including the Commercial districts, where ambient noise levels already exceed the permitted levels set forth in the Town Code (note see the noise level reading tables contained in the 2010-2030 Fairfax General Plan Noise Element). Certain residents asked them to amend the noise ordinance to lower the permitted noise levels and after much consideration and testimony at public hearings, the Council made the decision to not amend the Noise Ordinance.

The Conditional Use Permit process gives the Commission the right to deny the CUP if information is provided by the public and/or if they determine the use will have a significant negative impact on residents and neighboring uses. The Commission can also amend the recommended conditions if they determine a modified Conditional Use Permit can be approved without negatively impacting noise levels in the Town. Additional conditions to consider include: further limiting the hours and/or days outdoor events can occur and/or limiting the outdoor music to non-amplified music only.

Any action taken by the Planning Commission can be appealed to the Town Council which is the body that ultimately makes the laws and sets forth the policy for the Town of Fairfax. Whether or not to start allowing outdoor music on a regular basis by businesses may be an issue that needs to be elevated to the Council level for a determination on how the Town wants to proceed with this matter going forward.

The proposed Conditional Use Permit application does not include any changes to the exterior of the building so the application does not require the approval of a Design Review permit.

Staff's research revealed that the requested hours for the Use Permit are much greater than the hours for the other approved Use Permits for indoor music. A review of other live music venues with use permits for indoor music shows that the following Use Permits for Live Music have been issued and are still in effect:

- Nave's Bar – 3:00 PM to 1:00 AM, 7 days per week, issued in 1967
- 19 Broadway (Originally, Tucker's Tavern) –1:00 PM to 1:00 AM, 7 days a week issued in 1980k

Staff has not included a history of other out of business establishments that have been issued Use Permits for live indoor music but there were a number of them (La Belle Muse, Sleeping Lady Café, Amsterdam Café, Spanky's Restaurant, etc.). Fairfax has a long history of catering to live music venues.

31 Bolinas has 1 residential unit on the second floor, a residential duplex to the south, residences in a residentially-zoned neighborhood to the east and numerous residential apartments to the west across Bolinas Road and along Broadway to the north of the site. The proposed outdoor music could be disruptive to nearby residential uses and the days and hours it can occur should be limited. The hours and days requested by 29 Broadway are much more reasonable and we recommend that if the Commission chooses to grant this CUP, the indoor music be limited to 7 days a week, from 1:00 PM to 1:00 AM and outdoor music be limited from 4:00 PM through 8:00 PM, Thursday through Sunday.

## **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve the requested modification to Conditional Use Permit # 02-39 by adopting Resolution No. 16-17, setting forth the findings and conditions of approval for the permit which include scheduling the Use Permit for a public hearing to review the use permit 6 months after the restaurant opens and begins having outdoor musical performances. The review will include information from the Police Department on the number and outcome of the noise complaints received and responded to at 31 Bolinas Road during that time period.

## **ATTACHMENTS**

Attachment A – Resolution No. 16-17

Attachment B- lot line adjustment map

Attachment C - Applicant's Supplemental Information

Attachment D – Resolution No. 15-37, original resolution of Use Permit approval

Attachment E – E-mail from Ling Shien Bell

## RESOLUTION NO. 16-17

### **A Resolution of the Fairfax Planning Commission Approving A Modification of Conditional Use Permit 02-39 to Allow Indoor Music and Outdoor Music on the Covered Patio of the Commercial Restaurant Establishment at 31 Bolinas Road**

**WHEREAS**, the Town of Fairfax has received an application to modify the existing Conditional Use Permit No. 02-39 for 31 Bolinas Road to allow live indoor and outdoor music; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on June 16, 2016 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 documentary evidence in the record, 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 permit.

**WHEREAS**, the Commission has made the following findings:

1. The hours for the indoor music will be limited to 1:00 PM to 1:00 AM, seven days a week and for outdoor music to 4:00 PM through 8:00 PM Thursday, through Sunday. The limited hours and schedule will not conflict with or create any significant hardship for any of the other businesses or residential uses in the immediate neighborhood as long as the noise ordinance is complied with. 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.
2. The limited hours and the fact that the trellis covered patio is 33 foot setback from the nearest residential use which is located on the second floor of the same building the restaurant space is located, helps to mitigate the impacts of the live music. Therefore, the approval of the Use Permit 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.
3. Approval of the use permit is consistent with 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.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

**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, 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. The Use Permit shall be reviewed at the regular public hearing of the Planning Commission 6 months after the new business opens and begins hosting live music events outdoors. If the Commission determines at that time that the outdoor music is having a significant impact on neighboring uses, they will either revoke the Use Permit or place further conditions on the Use Permit.
6. The indoor music shall occur seven days a week between the hours of 1:00 PM and 1:00 AM and the outdoor music shall only occur Thursday through Sunday between the hours of 4:00 PM and 8:00 AM.
7. The exterior doors and windows of the business shall remain closed at all times when music is being played inside.

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

1. Because of the limited hours of indoor and outdoor music the approval of the Use Permit can occur without causing significant impacts on neighboring businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16<sup>th</sup> day of June, 2016, by the following vote:

AYES:  
NOES:  
ABSENT:

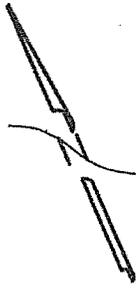
\_\_\_\_\_  
Chair, Laura Kehrlein

Attest:

\_\_\_\_\_  
Jim Moore, Director of Planning and Building Services

.

1" = 20'



12-PM-53

Mono Lane (15' Wide)

26.51'

N23°35'00"E

15.73'

S89°55'00"E

S89°55'00"E

104.50'

131.07' (131.10)

50.07'

S23°35'00"W

27.82'

New Lot Line

New Lot Lines

N66°25'00"W

37.35'

S23°35'00"W

28.80'

N23°35'00"E

17.19'

64.41' (64.40')

164.41' (164.40')

46

Existing Commercial Building

62.31'

79.50'

N66°25'00"W

125.00' (Tot.)

45.50'

BOLINAS AVE.  
(40' R/W)

N23°35'00"E

25.00'

45

N23°35'00"E

25.00'

44

LANDS OF SCHWAN  
D.N. 02-105327

N23°35'00"E

25.00'

Existing Parcel Line (Typ.)

S66°25'00"E

125.00'

N23°35'00"E

25.00'

43

Old Lot Line (Typ.)

N23°35'00"E

25.00'

42

S66°25'00"E

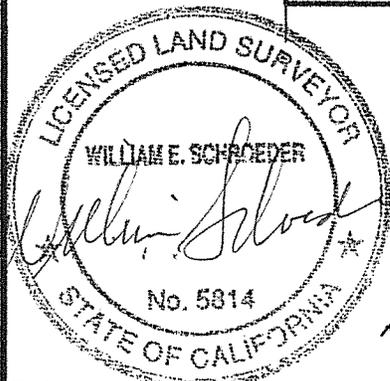
125.00'

N23°35'00"E

25.00'

25.00'

PASO HECOTRACT  
(4 RM T2)



PREPARED BY

WILLIAM SCHROEDER & ASSOC.

P.O. BOX 6801

SAN RAFAEL

CALIFORNIA

AP # 002-122-01, 02, 34 & 37

SHEET 1 OF 1

ATTACHMENT

B



MAY 02 2016

Project Description

RECEIVED

Modification of use permit to include live music on the patio and indoors at 31 Bolinas Road.

We are requesting that we be allowed to have live music on the patio and inside 31 Bolinas suite B. The live music would be kept at the allowed volume set forth by the city. A sound meter would be present and utilized to ensure compliance. Hours of use would be between 8:00am to 10:00pm for outdoor music and 7:00am to 1:30am for indoor music.

Music would consist of singer songwriters similar to what the Sleeping Lady would have as well as professional musicians serenading dinner guests. I envision mostly acoustical music with very little amplification.

A sound meter would be present at all times and would be utilized to set volume limits for each musician. It is our wish to bring life and vitality as well as good food and a unique experience to the downtown area. I am an advocate of not creating noise pollution. Being forced to hear second hand music is a negative experience for the people who live and work close by and would not be permitted.

Having live performances will draw people to the center of town, make for a lively environment and bring much-needed people and dollars to the downtown.

If managed with respect to the surrounding neighborhood, ie: volumes kept at or below the allowed limit set forth by the city it could be a win, win for everyone in Fairfax.

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Fairfax has a rich history of music. Although the demographics of the town are changing, lets keep the downtown alive and vibrant as well as respectful of the residents in the area. It does not have to be one or the other, given respect and courtesy backed up by noise laws that reflect the needs of everyone in town, Fairfax can continue to be the go to place for musical performances as well as provide a pleasant place to live.

I am an advocate of having noise laws that can be enforced with fines for those who abuse the laws.

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Within each zoning zone the planning department should describe what is allowable and what criteria that the applicant must meet on order to be allowed to have live music. This way it is fair for everyone.

Rules with fines should be put in place for businesses that violate the noise laws.

Signage to announce music: A small sign that can be opened and small fliers placed inside with a schedule of dates of events would be placed in the front of the patio next to the south side of the tree. The sign size would be 20 inches by 26 inches.

**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.
13. No light industrial uses are allowed in Unit D without a modification of this Use Permit.
14. The air conditioner units visible from Bolinas Road facing Mono Avenue must be screened from public view.

**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 18<sup>th</sup> day of November 2015, by the following vote:

AYES: Ackerman, Fragoso, Hamilton, Newton, Chair Green  
 NOES:  
 ABSTAIN: Gonzalez-Parber  
 ABSENT: Kehrlein



\_\_\_\_\_  
 Chair, Phil Green

Attest:



\_\_\_\_\_  
 Jim Moore, Director of Planning and Building Services

## Linda Neal

---

**From:** Mimi Newton [REDACTED]  
**Sent:** Wednesday, June 08, 2016 9:48 PM  
**To:** Jim Moore; Linda Neal  
**Subject:** Fwd: Thoughts on acoustic and amplified music

Jim & Linda

If you are planning any Planning items pertaining to amplified music in the downtown area, please include this message I received from Ling Shien Bell in the materials. Thank you -  
Mimi

----- Forwarded message -----

**From:** Helmmusic <[REDACTED]>  
**Date:** Wednesday, May 18, 2016  
**Subject:** Thoughts on acoustic and amplified music  
**To:** [REDACTED]

With the amplified music getting louder and louder, I am enjoying more and more the sound of acoustic music, it is to me the most organic, natural sound, that agrees completely with me at the core level. Granted, being able to project is not as easy as turning the volume knob, you have to learn how to use your voice, work on the sound quality of your instrument, figure out where the best place will be so you can project more... all things that are part of being a musician. Furthermore, when amplified sound travels, it gets distorted and becomes flat out ugly, be it speech or music. I have never heard acoustic sound getting distorted as it travels. Some instruments that are naturally loud and could be used to play outdoors without amplification: piano, accordion, the whole brass family, percussion instruments, oboes and bagpipes, then you wouldn't get the annoying distortion factor. All this brings me to believe that amplified sound belongs indoors, where it can be controlled with appropriate sound proofing so that the surrounding residential areas don't have to hear it. Even indoors, I'm not sure it needs to be so loud that you have to scream at the person seating next to you, it's got to do some damage to your auditive nerves, and it greatly limits the contents of your conversation. Of course when there is a festival, you expect to have your sound space occupied by loud music, but it shouldn't be the norm, recurring every time anything happens, like a farmers market, or a baseball game, I feel we need to be able to relax outdoors too, and not have to lock ourselves indoors in order to have some peace. \*I thought I might use the topic of the baseball games to illustrate my point about the difference of sound quality: I live on Dominga, and the sound travels very well from the field; I've experienced that the sound of the crowd cheering, being acoustic and therefore not distorted, is a lot more pleasant than the amplified announcements.\*  
Luckily there seems to be a little resurgence of acoustic music, I really hope it grows, so we can enjoy the sound of the human voice and musical instruments in their natural state.

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