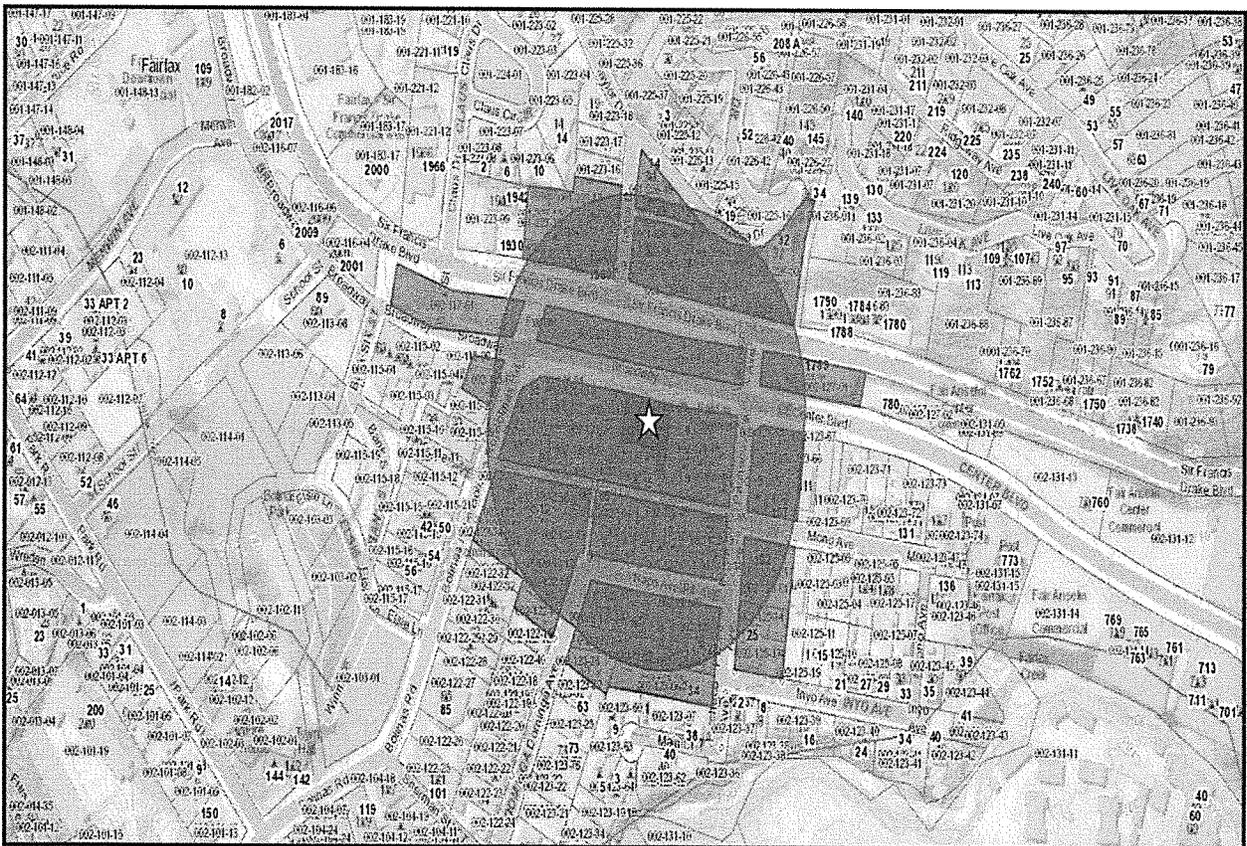


**TOWN OF FAIRFAX  
STAFF REPORT**  
Department of Planning and Building Services

**TO:** Fairfax Planning Commission  
**DATE:** October 20, 2016  
**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Principal Planner  
**LOCATION:** 17-19 Broadway; Assessor's Parcel No's. 002-121-23 and 24  
**ZONING:** Central Commercial CC Zone  
**PROJECT:** Food Trailer  
**ACTION:** Use Permit and Exception (Variance) to the Parking Regulations;  
Application # 16-29  
**APPLICANT:** Tony DeFrance  
**OWNER:** Garrett and Amory Graham  
**CEQA STATUS:** Categorically exempt, § 15301(a)



**17 AND 19 BROADWAY**

**AGENDA ITEM # 5**

## BACKGROUND

This item was continued from the July 21, 2016, the August 18, 2016, and the September 15, 2016 Planning Commission meeting(s). At the August 18, 2016, meeting the Commission directed the applicant to provide them with the following items for consideration at the September 15, 2016 Planning Commission meeting:

1. The applicants investigate and provide bids to the Planning Department for both the installation of a commercial kitchen within the existing building and for the addition of a kitchen to the side of the building. These improvements would be long term solutions to serving restaurant food in the bar. Since the proposal is now for the owner of Casa Manana to prepare the food, the estimates should be for a kitchen similar in size to the one currently used by Casa Manana;
2. A copy of the Health Department certificate and application;
3. Evidence that the trailer is licensed with the Department of Motor Vehicles (DMV);
4. A Planning Commissioner commented on the lack of adequate maintenance in the area where the trailer is currently and would continue to be parked. The applicant shall provide information on how the area around the truck would be maintained;
5. Clarify, in writing, the most recent proposal for the use of the trailer for food service. Provide as much information as possible but at a minimum the response should include the following information;
  - a) Would the food trailer be operated solely by the current owner of Casa Manana? If not, how many other employees would assist with food preparation associated with the trailer and how many employees would be on-site at any one time.
  - b) Provide written confirmation that the food from the food truck would be served in the bar and to Fairfax Inn patrons only and would not include carry out service.
  - c) Indicate the proposed hours of food service that the trailer would be operated by the current owner of Casa Manana.
  - d) If the grease separator would be located within the trailer itself, please provide a written explanation detailing how often the grease separator would be emptied and/or cleaned.

e) If the grease separator would not be installed within the trailer, indicate on the site plan how the building code requirements would be met for permanent installation of the separator.

f) Staff has been directed to contact the Marin County Health Department to clarify the conditions of their approval for operation of the food trailer. Please provide information regarding the Health Department's conditions of approval for operation of the food trailer. For instance, will the dishes and utensils be washed at the commercial food commissary?

The Commission advised the applicants that the food truck shall not be operated and the grease separator shall not be installed until the Commission provides its final action on the Use Permit and Parking Variance for the project. Thus, operation of the food trailer was required to cease at the August 18, 2016 Planning Commission meeting.

### **Site Information**

The 16,875-square-foot, level site, is developed with multiple uses including a bar and with 3 apartments above and the Fairfax Inn that contains an on-site manager's apartment and 14 hotel rooms. The uses share the parking lot with the spaces under the Inn building being primarily used by inn patrons and the spaces on the east side of the bar primarily used by the bar and restaurant patrons.

The 3,379-square-foot, bar/restaurant/apartment building was constructed in 1921 as a hotel and restaurant and was converted into a bar and liquor store with apartments above after World War II. The original Conditional Use Permit to operate a nightclub, with live entertainment, at 17 Broadway, was approved by the Town Council on December 8, 1980. The Conditional Use Permit was modified to allow the bar to expand into the liquor store area at 19 Broadway on August 24, 2000. A Conditional Use Permit (CUP) and, per the terms of that CUP, an exception to the parking requirements, was granted by the Planning Commission in 1995 to allow construction of the 6,022-square-foot Fairfax Inn [Town Code § 17.100.110(2)]. The parking exception was granted to allow the Inn to construct 28 on-site parking spaces, fewer spaces than the Town Code requirement of 31 spaces to accommodate the different uses on the site.

### **DISCUSSION**

#### **Conditional Use Permit (CUP)**

Town Code § 17.100.050(A) requires that a Conditional Use Permit be obtained for any use that is not conducted entirely within a building. Therefore, using the food trailer to provide a kitchen for 17 and 19 Broadway requires the approval of a Conditional Use Permit by the Planning Commission.

The applicant is requesting a Conditional Use Permit to legalize the preparation of food in an on-site food trailer for sale in the restaurant at 19 Broadway (the bar is actually 17 Broadway). The trailer is currently parked on site and the business has prepared food in the trailer for consumption by restaurant patrons from August of 2015 through August 18<sup>th</sup>, 2016 when the Commission directed them to stop the service until all the required permits were obtained for the use.

The owner filed an incomplete application to legalize use of the food trailer on December 3, 2015, and staff has been working with the owner to obtain a complete application since that time. The applicants have provided the following in response to the Commissions August 18<sup>th</sup> requests (contained in Attachment A):

1. One estimate for the installation of a commercial kitchen within the building totaled \$306,693. The applicants have not provided an estimate to install a permanent kitchen on the side of the building citing the existence of thirty (30) year old fruit trees along the eastern wall that would have to be removed.
2. A copy of the Permit to operate the trailer from the Marin County Health Department subject to conditions that include but are not limited to the following: 1) all produce shall be prepared at a commissary kitchen which has been determined to be at Whistlestop in San Rafael; 2) hot food shall be kept in a soup warmer until needed; and, 3) pre-prepared, unheated food shall be kept in the refrigerator within the trailer until needed (see the permit contained in Attachment A for more details). Staff was originally concerned that there were not adequate provisions to wash plates and cups/glasses used by patrons that would comply with the Health Department requirements for restaurants. This concern is no longer an issue because the applicants have indicated they would be using eco-friendly, compostable, tableware.
3. The Permanent Trailer Identification Card for the trailer has been provided
4. In a letter dated September 1, 2016, from the Central Marin Sanitation Agency (CMSA) stated that the applicants have demonstrated their ability to comply with the CMSA's requirements by placing a modified grease separator, (allowed by a variance from CMSA's requirements) within the trailer. A permit would be required from CMSA before the construction of the grease separator system begins.
5. On August 11, 2016 the applicants submitted plans showing two parking alternatives: 1) the plan labeled "revised plan 1" showing the provision of 23 spaces; and 2) the plan labeled "revised site plan" that showing the provision of 25 parking spaces.
6. A description of how the food service portion of the business would be operated from the trailer can be reviewed on pages 1 and 2 of Attachment A. Essentially, orders would be taken at either of the bars at 17 or 19 Broadway by the bar staff

who would run the orders to the trailer. Once the orders are ready, the Casa Manana staff would bring the food to the person who placed the order. There would be two (2) employees, one to prepare the food and one to serve the food.

Take-out food would not be promoted but also would not be prohibited. The applicants are modifying the Use Permit request to include approval of a bike delivery service for food that would provide for delivery of meals cooked in the trailer to residents. The hours of operation would be from noon to 10:00 P.M. Sunday, Monday, Wednesday and Thursday, and from noon to midnight on Friday and Saturday.

The property owner and Garry Graham, the bar owner, have indicated that due to changing patron tastes and expectations, it is imperative for the fiscal health of 19 Broadway (the bar and nightclub) that the establishment serve food other than the "typical" bar food. The owners state that people are expecting more out of the nightclub experience than just good music. This similar need by the general public for a "universal entertainment experience" was voiced last year by the owner of the Fairfax Theatre who applied for, and obtained, an ABC license to allow him to serve food, beer and wine at the theatre in addition to the traditional popcorn and candy fare. The theatre owner also indicated that the ability to serve food and alcohol was necessary in order for his business to survive fiscally.

One other business owner has indicated that they are not supportive of this growing trend of Fairfax businesses avoiding the expense of upgrading local buildings in compliance with building and health codes by operating from food trucks and trailers (Exhibit F).

The originally submitted application was reviewed by staff with the restaurant food service considered an accessory use to the bar and nightclub use. The new proposal, to have the trailer operated by a displaced, successful, local restaurant with a significant and loyal customer base, may result in impacts to the site that cannot be anticipated by the public, staff or the Commission.

Adding the bicycle delivery component and the indication by the applicants that while take out service would not be encouraged it would also not be prohibited makes it difficult for staff to evaluate the impacts of the revised Use Permit application. Staff is unaware of any similar businesses that operates in this manner in Marin County. Comparing this recently proposed modification to the Use Permit (bicycle delivery take out service) to an existing, similar business would be the only way for the applicant and staff to obtain customer numbers and to determine parking and traffic impacts on the surrounding businesses, residences and the downtown. The best staff can do in this situation is to remind the public and the Commission that Conditional Use Permits can be revoked if the approval conditions are violated. To that end, if approved, the Conditions of Approval contained in the Resolution should be carefully crafted and clear with no room for misinterpretation of whether the approved permit is intended to be for the life of the business, or a temporary approval to allow the owners time to obtain the

capital for a permanent kitchen.

## **Parking**

Town Code § 17.100.110(2) states that off-street parking and loading in the Central Commercial Zone, for conditional uses, be varied by the terms, provisions or conditions of the use permit.

The property is already operating with a parking space deficit due to the Planning Commission exception granted when the Inn was approved in 1995. The food trailer takes up an additional 2 parking spaces, further decreasing the total number of on-site parking spaces to 24. A site inspection on Friday, October 13, 2016, revealed that: a) at least four (4) of the existing parking spaces are not available for parking, but are being used as a patio area for the Inn and storage; and b) the accessible parking space provided does not meet code and is not laid out on the site per the parking lot plan that was approved when the Inn was built.

The owner has provided letters from his tenants indicating that they do not have vehicles and therefore, do not use any on-site parking (Exhibit E).

The applicants have indicated that the employees of the food-truck would not have vehicles and any deliveries would be made by bicycle.

The Department of Planning and Building Services has not received complaints about the trailer causing a parking shortage during the 12 months it has been parked on the site. Conditional Use Permits can be revoked or modified by the Planning Commission at any time should conditions/complaints warrant the revocation or modification of the approval.

The applicants have submitted two (2) parking lot alternatives for the project (submitted and stamped received on August 11, 2016). The two spaces depicted in the southwest corner of the parking lot of "revised plan 1" are not viable because they conflict with the parking spaces numbered 12 and 13. Therefore, the "revised plan 1" requires a parking variance to further reduce the number of parking spaces provided on site from the approved 28 on-site spaces, to 22 spaces (a reduction of 6 spaces). The "revised plan" reduces the on-site parking from the approved 28 spaces to 24 spaces (a reduction of 4 spaces).

Staff recommends that if the Use Permit is approved, it be approved subject to the applicant's compliance with second "revised site plan", sheet A2.5, depicting the provision of 24 on-site parking spaces.

## **Design Review**

The trailer is not particularly attractive but it is Staff's position that it does not reach the level of an eyesore because it is set back from the public sidewalk by 27 feet, behind

the outdoor deck located at the northeast corner of the bar. The owners are willing to paint the trailer one of the following colors – brown (Valspar, Forest Majesty, 31-A), tan (Valspar, Watership Down, 22-1C), blue (Valspar, Majestic Peak, 13-1A) or green (Valspar, Bathing Beauty, 11-1A).

If the Commission determines that painting the trailer would significantly improve views of the trailer from the street, they should determine which of the proposed colors would help the trailer blend into the site and include the painting as a condition of approval in attached Resolution No. 16-24.

### **Potential Long Term Impacts**

The Commission should consider the potential long term impact of allowing one business to operate a restaurant from a trailer rather than requiring installation of a code compliant commercial kitchen within the building. There are at least three other properties in Town developed with commercial buildings and parking lots, that could request a similar consideration to avoid the high cost of installing a permanent commercial kitchen. These sites are at 2000 Sir Francis Drake Boulevard, currently Argyle Plumbing, 29 Broadway, currently Peri's Bar, and 1930 Sir Francis Drake Boulevard, currently the Mana Bowl.

If the Commission decides to grant the Use Permit request, the Commission should consider whether to impose a limit on the length of time trailer can be used in place of a permanent commercial kitchen. Placing such a time limit was a requirement of the Use Permit modification granted to 2001 Sir Francis Drake Boulevard. For 2001 Sir Francis Drake Boulevard, the Commission approved use of a food truck within the building, in place of a commercial kitchen, for three (3) years only, to allow the owner time to obtain the financing necessary to construct a permanent commercial kitchen.

The staff has attached two Resolutions: (1) a Resolution approving the Use Permit with a reduction of three (3) on-site parking spaces and operation of a bike delivery service from the food trailer; and (2) a Resolution denying the Use Permit and requested reduction of on-site parking.

The Commission should consider the current proposal, the entire body of information provided to date and presented at the meetings, in its determination of whether providing food service from a food rather than constructing costly kitchen improvements is in the best interest of the applicants, and the Town of Fairfax downtown commercial area as a whole.

### **California Permit Streamlining Act**

This application was continued after both the Town and the applicants mutually agreed at the August 18<sup>th</sup>, 2016 meeting to extend the time for review of the application for ninety (90) days. The ninety day extension expires on November 16<sup>th</sup>, 2016, the day before the November 17, 2016 Planning Commission regular meeting. Therefore, the

Planning Commission must take action on the application at the October 20, 2016 meeting.

## **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve the requested Conditional Use Permit Application 16-29 and parking reduction for a limited time of five (5) years by adopting Resolution No. XXX setting forth the findings and conditions of approval.

The alternative recommendation is to deny the Use Permit and requested parking space reduction by adopting Resolution No. XXX, setting forth the findings for denial of Conditional Use Permit 160-29 and further reduction in the required on-site parking.

Note: The number that will be assigned to the adopted resolution is 16-24.

## **ATTACHMENTS**

- Attachment A1 – Resolution No. 16-24 for approval of Conditional Use Permit 16-29
- Attachment B1 – Resolution No. 16-24 for denial of Conditional Use Permit 16-29
- Attachment C1 – Applicant's supplemental information responding to the Planning Commission questions from the August 18, 2016 meeting
- Attachment D1 - Applicant's supplement information submitted just prior to the August 18<sup>th</sup>, 2015 Planning Commission meeting
- Attachment E1 – Applicant's originally submitted supplemental information
- Attachment F1 - E-mails and other communication between staff and the applicant
- Attachment G1 – Staff's letter in response to applicant's assertion that the parking lot is not a shared lot
- Attachment H1 – Letter from owners of the Fairfax Coffee Roastery
- Attachment I1 – minutes from the August 18, 2016 Planning Commission meeting
- Attachment J1 – Originally approved parking lot layout

RESOLUTION NO. 16-27

**A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit, Design Review and Exception to the Parking Requirements for a Food Trailer to Provide Kitchen Services and a Bicycle Food Delivery Service for the Restaurant at 19 Broadway**

WHEREAS, the Town of Fairfax has received an application to legalize the location and operation of a food trailer in two required parking spaces of the bar/restaurant/nightclub at 17–19 Broadway to provide food service to the on-site restaurant establishment and a bicycle restaurant delivery service; and

WHEREAS, the Planning Commission reviewed the matter at the August 18 and October 20, 2016, meetings and approved the Conditional Use Permit, Design Review Permit and Exception to the Parking Requirements; and

WHEREAS, based on the body of evidence submitted for the application, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the requested discretionary permits as long as the conditions below are complied with in a timely fashion; and.

WHEREAS, the Commission has made the following findings:

1. The age of the existing structure, location of the surrounding uses with residences upstairs and the Fairfax Inn built immediately to the south and west, make it expensive to install a commercial kitchen inside. Therefore, the approval of the use permit to allow the preparation of the food at the Whistlestop commercial kitchen in San Rafael, in conjunction with the food assembly, service and off-site delivery by bicycle from the on-site food trailer at 17-19 Broadway is necessary for the business to remain in operation. Therefore, until such time as the business can grow the capital to install a permanent commercial kitchen inside the building, the use shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The restaurant hours of operation are from Noon to 10:00 pm, Sunday, Monday, Wednesday and Thursday and from Noon to 12:00 P.M. on Friday and Saturday on Sunday. The trailer is located 39 feet from the adjacent Fairfax Inn units and over 90 feet from the residences on Mono Lane. The residential tenants of the 17-19 Broadway building have lived with the trailer use for over one year and added bicycle deliver service is not expected to result in any additional impacts to the adjacent residential uses. Therefore, the approval of the Use Permit and use of property as approved, 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. Restoration of three (3) of the shared parking lot spaces will minimize the loss of the 2 parking spaces to the food trailer on surrounding streets and properties and will decrease the number of on-site parking spaces by only 1 space. The total number of spaces on the site will be decreased from the 18 approved when the Inn was built to a total of 25 parking spaces. Therefore, the Conditional Use Permit is consistent with those objectives, goals and standards pertinent to the particular case and contained Zoning Ordinance.
4. Approval of the Conditional Use Permit, with a review within three (3) years of the restaurant being fully permitted and opening for business, will result in equal or better development of the premises than would otherwise be the case. The three (3) year review of the conditions of approval and the need for the trailer in lieu of a permanent kitchen, is in the public interest and for the protection or enhancement of the general health, safety and welfare of the community.
5. The white color and clean lines of the food trailer and the fact that it is partially screened from view by the outdoor patio, result in the use complying with the Design Review Criteria set forth in Town Code § 17.020.040.
6. The main draw at 17-19 Broadway used to be the musical night life. The incorporation of an established restaurant that has been dislocated from its permanent location, could result in impacts on the surrounding businesses and the Fairfax Inn, that shares the site with 19 Broadway. Therefore, the Conditional Use Permit, in order to ensure these findings are still valid, requires a three (3) review so the Commission can re-evaluate the impacts of the Use on the property, the neighboring businesses and the downtown to ensure that neither present nor anticipated future pedestrian and vehicular traffic volumes generated by the use create unanticipated negative impacts.
7. Granting the exception to the parking regulations with this Conditional Use Permit at this time 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.
8. Granting the exception to the parking regulations with this Conditional Use Permit at this time will not create a safety hazard or any other condition inconsistent with the objectives of this title.
9. Failure to comply with the Conditional Use Permit Conditions of approval, or the creation of any unanticipated impacts, will result in Use Permit 16-29 being scheduled for a public hearing where the Commission can determine whether the conditions need to be amended or the Use Permit needs to be revoked.

**WHEREAS**, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. This approval is limited to the development illustrated on the plan prepared by Rushton Chartock Architects dated 8/9/16, page A2.5.
2. Food prepared in the trailer shall only be purchased and be served inside 17 and 19 Broadway except for food delivered by bicycle to off-site locations.
3. Persons waiting for food shall only congregate within 17 and 19 Broadway.
4. Delivery vehicles and other vehicles accessing the trailer or 17-19 Broadway shall not block the parking lot aisles in a manner that obstructs access to the rear of the parking lot.
5. Any additional signage on the building, trailer or site shall require a sign permit before the signs are erected. Failure to obtain a sign permit prior to erecting any new signs will result in the property and business owners being cited for violation of Town Code Chapter 17.064.
6. Prior to issuance of a building permit for the grease trap interceptor, the applicant or his assigns shall submit 3 sets of plans, a complete building permit application and a deposit in an amount to be determined by the Building Official to the Fairfax Building Department. The submittal plans shall include a site plan showing the location of the grease trap interceptor and waste lines and the location and configuration of the required ADA parking space.
7. Prior to submittal of the building permit plans, the applicant shall secure written approval from the Ross Valley Fire Authority noting the trailer location and setup compliance with any Fire Department regulations and/or conditions.
8. All construction-related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times and out of the parking lot travel lane at all times. This condition may be waived by the building official on a case by case basis with prior notification from the project sponsor.
9. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.
10. During construction, the developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".
11. **Any** changes, modifications, additions or alterations made to the approved set of plans described above will require a modification of permit # 16-29. **Any**

construction based on job plans that have been altered without the benefit of an approved modification of Application # 16-29, will result in the job and/or the use being immediately stopped and red tagged.

12. Any damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.
13. 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 notifying the applicant of any said claim, action, or proceeding.
14. 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.
15. The applicants 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 8.32, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
16. 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 Planning Commission (when required).

17. The use of the site shall remain consistent with the stipulations required for the site and contained in this resolution.
18. The applicant shall comply with all conditions of the Marin County Health Department, Ross Valley Sanitary District, Central Marin Sanitation Agency, Ross Valley Fire Department, Fairfax Police Department, the Fairfax Public Works Department and the Fairfax Building Department.

### **Central Marin Sanitation Agency (CMSA)**

The grease trap interceptor will require the approval of the Central Marin Sanitation Agency if it is located outside the building. CMSA approval in writing will be required before the Building Official finalizes the permit and before the operation of the food trailer will be in compliance with Use Permit # 16-29.

### **Marin County Environmental Health Department**

The project plans must be submitted and be approved by the Environmental Health Department prior to issuance of the building permit.

### **Miscellaneous Conditions**

1. Conditions placed upon the project by other agencies or departments can be waived in writing by those agencies or departments. Conditions placed upon the project by the Commission can only be modified or waived by the Commission.
2. The parking lot will be restored within 30 days to the condition on sheet A2.5 of the plans received August 11, 2016, by Rushton Chartock Architects in compliance with the Conditions of Conditional Use Permit 16-29 including including an accessible parking space that meets the Americans with Disabilities Act regulations.
3. A grease interceptor will be installed adjacent to the trailer that complies with building and health codes within 60 days or the Town will contact the Marin County Health Department and ask them to close the restaurant.
4. The owners will obtain a sign permit for the unpermitted signs at 19 Broadway that reads, "MYX Lounge".

**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of the Town of Fairfax hereby finds and determines that the approval of the Conditional Use Permit and Design Review Permit for the food trailer at 17-19 Broadway is not contrary to the regulations set forth in the Central Commercial CC Zone and will not have a negative impact on surrounding businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 20th of October, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

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Chair, Laura Kehrlein

Attest:

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Jim Moore  
Director of Planning and Building Services

**RESOLUTION NO. 16-27**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX DENYING APPLICATION NO. 16-29 FOR LEGALIZATION OF A FOOD TRAILER AT 17-19 BROADWAY TO SERVICE THE RESTAURANT AT 17 BROADWAY IN PLACE OF PERMANENT COMMERCIAL KITCHEN INSTALLATION WITHIN THE BUILDING, INCLUDING A REDUCTION OF THE ON-SITE REQUIRED PARKING SPACES**

**WHEREAS**, on December 3<sup>rd</sup>, 2015, Garrett Graham and Tony DeFrance ("Applicants") submitted an incomplete application for a Conditional Use Permit and Parking Variance to operate a food trailer at 17-19 Broadway (the "Project"); and

**WHEREAS**, on August 18, 2016, and October 20, 2016, the Town of Fairfax Planning Commission, held a duly noticed public hearings to consider approval of the applicants requested Conditional Use Permit and parking exception; and

**WHEREAS**, at the conclusion of the August 18, 2016, Planning Commission meeting, that body did determine the proposed use would have negative visual impacts and parking impacts that cannot be mitigated on the Town and surrounding businesses and residences; and

**WHEREAS**, as set forth in the staff reports prepared for the Planning Commission in accord with the Fairfax Zoning Ordinance, the property is located within the Central Commercial Zone District which requires commercial uses to operate entirely within a building [Town Code § 17.100.040(A)]; and

**WHEREAS**, food truck trailers located outside of a building are a conditionally permitted use within the 'Central Commercial' zoning district, per Town Code § 17.100.050(A). In order to approve any Conditional Use Permit, the approving body must be able to find that the proposed development satisfies four criteria set forth in Town Code § 17.032.060; and

**WHEREAS**, at the public hearing on August 18, 2016, the Commission determined that the findings required for approval cannot be made and made the following findings for denial:

The approval of the requested use permit would constitute a grant of special privilege by allowing the applicants to use a kitchen located outside of the building to accommodate an on-site restaurant when other businesses have gone to considerable expense to install permanent, interior commercial kitchens to accommodate their businesses.

The site is already developed in a manner that contributes to its patrons and other businesses patrons parking throughout the surrounding neighborhoods thereby causing noise, litter and other problems. The development and use of property as proposed with food preparation in a food trailer will increase these problems and would be a detriment to adjoining properties and surrounding residential areas creating 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 Conditional Use Permit.

Approval of the Conditional Use Permit would be contrary to the Zoning Ordinance which envisions operation of businesses from buildings and complying with certain parking requirements.

Approval of the Conditional Use Permit would not result in equal or better development of the premises than would be the case if a kitchen were installed within the building and the on-site parking were maintained as approved in conjunction with the construction of the Fairfax Inn.

**WEREAS**, at the conclusion of the August 18, 2016 and October 20, 2016, public hearings, the Town of Fairfax Planning Commission found that:

1. The findings required by Section 17.032.060 of the Town Code to approve a Conditional Use Permit for a food trailer could not be made.

2. The Planning Commission likewise determined that it could not approve the proposed Project because of its failure to conform to the Land Use Element of the Town of Fairfax General Plan, specifically Policy LU-7.2.1 which states that, "New and renewed development shall be compatible with the general character and scale of structures in the vicinity....". and Policy LU-7.2.3 which states that, "Traffic and parking concerns related to new and renewed development shall be addressed in a manner that does not result in undue hardship or significant negative impacts on properties and infrastructure in the vicinity....".

**NOW, THEREFORE, BE IT HEREBY FOUND AND RESOLVED** by the Planning Commission of the Town of Fairfax that based on the foregoing, the Planning Commission does deny Application No. 16-29 in its entirety.

The foregoing Resolution was adopted at a regular meeting of the Fairfax Planning Commission held in said Town on the 20<sup>th</sup> day of October, 2016, by the following vote, to wit;

AYES:

NOES:

ABSENT:

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Laura Kehrlein, Chairperson

Attest: \_\_\_\_\_

Jim Moore, Director of Planning and Building Services

Answer to Town of Fairfax Planning Dept. Notice of Action  
by the Fairfax Planning Commission  
regarding Food Trailer Application 17 & 19 Broadway

TOWN OF FAIRFAX

OCT 03 2016

RECEIVED

**1) a.** Building addition for kitchen:

We have concluded that an addition to the building would not be feasible, and did not seek a bid for same. The logical entrance to an addition to the building would be through the current door that leads to the parking lot in the back of the building at #17 Broadway. This entrance serves as a fire exit for the building and cannot be lost for such use.

Additionally, there at least three decades-old citrus trees that would have to be destroyed in the construction of an addition. These trees may be as old as the building itself. They also provide fresh lemons and limes for both the establishments at #17 and #19 Broadway.

**1) b.** Construction of a kitchen inside the existing building:

See Exhibit 1.

The previously referenced bid of over \$220,000 was obtained several years ago, when the decision was ultimately made to add a new bar inside #19. We obtained an up-to-date bid, which you can see is considerably higher today than the previous, \$306,693.00.

Given that we already have a Health Department approved facility in the food trailer, it does not seem reasonable to expend over \$300,000 to create a kitchen inside. Also, this is not financially feasible for the night club operation at this time, nor is it likely to become feasible in the near future.

**2)** Copy of the Health department certificate and application: Obtained by Fairfax Building & Planning, per Letter of Planning Commission Action dated 8/23/16.

See exhibits 2.

**3)** Copy of the Proof of DMV registration:

See exhibit 3

**4)** Maintenance plan for area around the trailer.

A maintenance plan, including raking, sweeping and disposal of cardboard will implemented by 19 Broadway's maintenance staff. The plan calls for maintenance around the trailer no less than three days per week. Litter or food debris will be disposed of on a daily basis by food service staff.

**5)** Proposal for operation of Food Service for 19 Broadway and Myx Lounge

Upon approval by the Town, and satisfaction of all conditions of the requested use permit, Casa Mañana will commence providing food services to the patrons of 19 Broadway and Myx Lounge.

Food will be ordered at either the bar at 17 Broadway or the bar at 19 Broadway. Orders will be taken by Bar staff and forwarded to the kitchen, contained within the food trailer located in the parking lot.

ATTACHMENT **CI**

Once prepared, food orders will be brought into the bar and served, by Casa Mañana staff to the patron who placed the order.

There will be two employees in the kitchen at any given time. One to serve as cook, and the other to serve as wait staff.

Take-out orders will not be promoted, however as is customary in the restaurant industry, it will not be denied.

Hours of operation are proposed as follows:

Sunday - Noon to 10 p.m.

Monday - Noon to 10 p.m.

Tuesday - CLOSED

Wednesday - Noon to 10 p.m.

Thursday - Noon to 10 p.m.

Friday - Noon to Midnight

Saturday - Noon to Midnight

Food service staffing will consist of Josiah Luis Alderete, who will manage the operation and two additional staff who are 10 year employees of Casa Mañana, neither of whom own motor vehicles, and are bicyclists/transit riders. Again, any two of the three will be working at the same time.

When open at their Fairfax Square location, Casa Mañana offered a delivery service via electric bicycle to locations in and near the Fairfax community. It is Josiah's desire to continue this service, as it will allow him to serve patrons who are under the age of 21. Again, delivery staff would be bicycle commuters, and would not be bringing a motor vehicle to work. Inherently, this service would not add traffic or the need for additional parking.

It is proposed that all food will be served in/on eco-friendly, compostable plates and containers. A Green Can, will be obtained from Marin Sanitary Service, the contents of which will be collected by MSS during their usual schedule in Fairfax's Central Commercial District.

The Grease Separator will be a permanent fixture. 19 Broadway Co-owner Chris McCarthy met with Robert Cole of Central Marin Sanitation Agency and a plumber from Argall Plumbing shortly after the August Planning Commission hearing to discuss installation options. Mr. Cole has provided specifications. See exhibit 4 for details on the Grease Separator, which will be installed by Argall Plumbing immediately after approval of this Food Service application.

The target date for Casa Mañana to commence operation is November 1, 2016.

## **6) Restoration of Parking**

The site plan for parking reconfiguration has been obtained from Rushton Chartock Architects. It calls for reconfiguration to the ADA parking space to bring it to code, and restoration of parking per the original Fairfax Inn approval. See exhibit 5 (Site Plan # A2.5 - "Revised Site Plan" submitted for August 18, 2016 Planning Commission hearing).

## **7) Signage Permit for #19 Broadway (Myx Lounge).**

We have decided to remove the Myx Lounge signage from the windows at #19 Broadway.



- 5) Electrical:  
Install new electrical panel, wiring for appliances, lighting, switches, and receptacles. Install new lighting and trim's as specified.  
Cost = \$21,588.00

---

Signature of Acceptance

- 6) Insulation:  
Install new fiberglass insulation in all exterior wall cavities.  
Cost = \$1,200.00

---

Signature of Acceptance

- 7) Wall Coverings:  
Install fire rock, FRP panels, tiles, and stainless steel panels as specified. Paint all unfinished surfaces specified.  
Cost = \$25,305.00

---

Signature of Acceptance

- 8) Floor Coverings:  
Install tile and motor bed throughout kitchen area.  
Cost = \$3,650

---

Signature of Acceptance

- 9) Cabinetry:  
Fabricate and install storage cabinetry as specified.  
Cost = \$18,3000.

---

Signature of Acceptance

- 10) Fixtures:  
Purchase and install (4) stainless steel wall shelves, Hobart dish washer, and duke 3-compartment sink, and advance Tabco work table as specified.  
Cost = \$28,811.00

---

Signature of Acceptance

11) Appliances:

Purchase and install South bend range, (2) Vulcan-Hart fryers, and Magikitchin charbroiler as specified.

Cost = \$35,911.00

\_\_\_\_\_  
Signature of Acceptance

12) Appliances:

Purchase and install Traulsen refrigerator, Traulsen freezer, and Delfield refrigerator base as specified.

Cost = \$34,342.00

\_\_\_\_\_  
Signature of Acceptance

13) Purchase and install superior hood system with fire suppression system.

Cost = \$8,596.00

\_\_\_\_\_  
Signature of Acceptance

**Proposed Total: \$306,693.00**

This proposal is valid for 60 days.

**If any work is performed outside the scope of work described above, T&M rates may apply to calculate cost of additional work. See rates listed below:**

\*Hourly Rates are as Follows:

Principle \$85/hr

Journeyman \$65/hr

Apprentice \$38/hr

We propose to furnish all materials and labor, in compliance with specifications provided above:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Under the Mechanic's Lien Law, any contractor, subcontractor, laborer, material man, or other person who helps to improve your property and is not paid for his labor, services or material, has a right to enforce his claim against your property.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and hereby accepted.

**Exhibit 1, pg.4**

Any changes or additions to this proposal will be proposed as changes requiring signed acceptance prior to implementation.

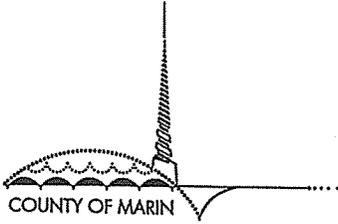
Payment Schedule:

- 1) \$1,000.00 Due upon receipt of proposal.
- 2) \$100,000.00 Due upon start of work.
- 3) \$160,000 Due upon completion of close in.
- 4) Remainder due upon final inspection.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Acceptance

Health Department Certificate  
and Application  
Documents  
In Town File



COMMUNITY DEVELOPMENT AGENCY  
Environmental Health Services  
MARIN COUNTY CIVIC CENTER  
3501 Civic Center Drive, Room 236, San Rafael, CA 94903  
415) 473-6907 Fax: (415) 473-4120  
www.marincounty.org/ehs

August 19, 2016

# Permit to Operate

Permit valid 6/15/15 thru 6/15/16

This permit is non-transferable and must be prominently displayed in the place of business

Site:  
GRILL 19

Owner:  
TONY DEFRANCE

License Number: L14463  
License Description: Food Facility  
Mobile Food Facility



Permit is valid unless suspended or revoked by the County of Marin, Environmental Health Services

Rebecca Ng, Deputy Director Environmental Health Services

TONY DEFRANCE  
17 BROADWAY ST  
FAIRFAX, CA 94930

FOOD HANDLING OPERATIONAL PROCEDURE FORM FOR FULL SERVICE AND LIMITED FOOD PREPARATION OCCUPIED MOBILE FOOD FACILITIES

1. Provide a complete menu. List all foods to be offered to the public including beverages, prepackaged and unpackaged foods. Include sample packaging with labels. See attached menu

2. Indicate which foods will be prepared at the commissary.

Tomatoes, onions, vegetable chili, meats, jalapeños, bell peppers, sauces, breading

3. Explain how food preparation will be conducted without the use of a food preparation sink. For example, how will fresh produce be cleaned? All produce will be cut and prepared at commissary kitchen. Once prepared, food will be labeled and stored in a plastic/metal container. Food will be labeled with product name and date made.

4. Describe in detail how foods will be prepared at the commissary for use on the mobile food facility. Include sample packaging with labels.

Dicing tomatoes and onions, make chili, braising meats, dicing and chopping jalapeños, roast and slice bell peppers, prepare sauces and standard breading procedures.

5. Describe in detail, the procedure for the sanitizing of utensils in the warewashing sink. Indicate an approved sanitizer, containing one of the following chemicals in the specified concentration:

(a) Chlorine at 100 parts per million (ppm) for at least 30 seconds of contact;

(b) Quaternary ammonium at 200 ppm for at least one minute of contact. Test strips are required.

Utensils will be soaked in 120° Fahrenheit water/dove soap mixture, scrubbed with a green scrub pad and then rinsed in 120° Fahrenheit water and then placed into sanitizing solution for a minimum of thirty seconds.

6. List all equipment and utensils that will be used on the Mobile Food Truck. All equipment and utensils are subject to approval by the County of Marin Environmental Health Services. See attached

7. Describe how food contact surfaces will be cleaned and sanitized during hours of operation.

A red sanitizer bucket will be away from food and off the ground and used to wipe down counters and shelving. sanitizer container to hold equipment (i.e. spoons, ladles etc...)

8. Describe how and where the potable water tank will be filled. We are a fixed location at 19 Broadway which will have a potable water hose connected directly to the unit.

9. Describe how and where the wastewater will be disposed. Waste water will be disposed of at the bars (19 Broadway) water dump area.

10. Describe how hot foods will be held hot (@ 135°F or above). Potentially hazardous foods held at or above 135°F shall be destroyed at the end of the operating day. Thermometers are required. We will be holding our hot food in a soup warmer or will be using a double boiler.

11. Describe how precooked foods will be heated prior to hot holding on the mobile food facility. Pre cooked food will be held in the refrigerator (36°F) and reheated as ordered on either the flat or standard grills

12. Describe how cleaning chemicals, spare times and specialty tools will be stored separate from food and utensils. There are 2 cabinets below the three compartment sink dedicated to only cleaning supplies, tools and extra washing towels.

13. Describe how potable water hoses will be maintained free from contamination on the truck. The water hose is plugged directly into the spigot and runs with the other pipes attached with zipties to the unit.

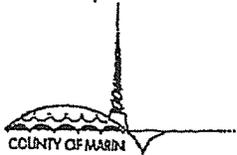
14. Describe how and where the truck will be stored overnight. The unit will be parked on the property of 19 Broadway, in the back parking lot.

15. Describe other operational procedures specific to this business. Keep propane tanks filled and free of debris, ensure hoses are free flowing and crack free, check temperatures of freezer and refrigerator, and make sure the waste water buckets are empty.

Attach additional information as needed to describe all operating procedures.

**FOR EHS OFFICE USE ONLY**

Operational Procedures Reviewed and Approved by:  Environmental Health Specialist	Date of Approval:
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COMMUNITY DEVELOPMENT AGENCY  
ENVIRONMENTAL HEALTH SERVICES  
MARIN COUNTY CIVIC CENTER  
3501 CMC CENTER DRIVE, ROOM 236, SAN RAFAEL, CA 94903  
(415) 473-6907 FAX: (415) 473-4120  
www.marincounty.org/ehs

**SHARED FOOD FACILITY/COMMISSARY AGREEMENT**

**I. To be completed by APPLICANT — Please print or type.**

Business Name: 19 Broadway Bar & Club Bus. Phone: (415) 459-1091 Bus. Fax: \_\_\_\_\_  
Address: 19 Broadway City/State: Fairfax, CA Zip: 94930  
Owner Name: Tony DeFrance Home Phone: 415-686-9890 E-mail Address: DeFrance@CrestA.G.

I hereby state that the above information is current, true and correct to the best of my knowledge and agree to utilize my approved commissary in accordance with the California Health & Safety Code. (Note: If this Commissary Agreement is modified or cancelled, and a new Commissary Agreement is not provided to this office, your permit to operate a food facility will be subject to suspension or revocation.)

Signature: [Signature] Date: 6/1/15

**II. To be completed by COMMISSARY OWNER/OPERATOR — Please print or type.**

Commissary Name: Whistle Stop Bus. Phone: 415-456-9062 Bus. Fax: \_\_\_\_\_  
Commissary Address: 930 Tamalpais Ave City/State: San Rafael, CA Zip: 94901  
Commissary Owner Name: Krista Pelletier Home Phone: 456-9062 E-mail Address: Kpelletier@gmail.com

I understand and agree to provide for the following requirements: (Check all that apply)

- sanitary wastewater disposal
- potable water
- proper disposal of refuse & garbage
- hot & cold water for vehicle cleaning
- food preparation area
- vehicle/cart storage (circle one) vehicle make/year \_\_\_\_\_ license plate # 4H 65756
- adequate storage for food/equipment
- utensil washing
- electrical hookups
- toilet & hand washing facilities
- overnight vehicle storage

I hereby declare that I hold a valid Environmental Health Permit to Operate a commissary as defined by the California Health and Safety Code §114326. (INCLUDE A COPY OF VALID ENVIRONMENTAL HEALTH OR STATE PERMIT.) I hereby declare and certify that the business named in Section I is operating out of the above commissary. I will notify Marin County Environmental Health, by written document, of any change in the status of my operation, my environmental health permit, or when this commissary agreement is terminated.

Signature of Commissary Owner/Manager: Krista Pelletier Print Name: Krista Pelletier Date: 6/1/15

**III. To be completed by the local ENVIRONMENTAL HEALTH DEPARTMENT to verify the current commissary Health Permit when the above commissary establishment is located outside of Marin County — Please print or type.**

The food establishment is located in Marin County and meets the commissary requirements set forth in the California Health and Safety Code §114326. The above checked requirements are available at the proposed commissary.

Signature of REHS \_\_\_\_\_ Print Name \_\_\_\_\_ Bus. Phone \_\_\_\_\_ Date \_\_\_\_\_

534 SEP 21 2016 47

*W/O Valparaiso Streets Required on*  
*PTI Trainers. (S) Calif*  
DEPARTMENT OF MOTOR VEHICLES  
75 TAMAL VISTA BLVD  
CORTE MADEIRA CA 94025

PERMANENT TRAILER IDENTIFICATION CARD

MAKE	YR MODEL	YR 1ST SOLD	VLF CLASS	*YR	TYPE VEH	TYPE LIC	LICENSE NUMBER
CARGO	2005	0000	AP	2014	47F	PA	4HG5756
BODY TYPE MODEL	MP	MO	WC	UNLADEN WT			
UTTL		XW	F	07000			VEHICLE ID NUMBER 5NHU0CMV275U207475
TYPE VEHICLE USE	MP	AX	CC/ALCO	DT FEE RECVD	PIC		
TRAILER			21	09/21/16	T		

EXP DATE: PERM

AMOUNT PAID \$ 7.00

REGISTERED OWNER  
DEFRANCE ANTHONY  
150 WEST OAK KNOLL

AMOUNT DUE \$ 7.00  
AMOUNT RECVD 7.00

CASH :  
CHCK :  
CRDT :

SAN ANSELMO  
CA 94960

LIENHOLDER

H00 534 47 0000700 0007 CS H00 092116 PA 4HG5756 47



September 1, 2016

19 Broadway Bar and Nightclub  
17 Broadway Boulevard  
Fairfax, CA 94930

ATTN: Tony DeFrance

**Subject: Grease Removal Device Requirements**

Based on the inspection at 19 Broadway Bar and Nightclub, 17-19 Broadway Blvd., Fairfax on August 19, 2016, we have determined that the plumbing modification specified below will assure the establishment is in compliance with the requirements of Section 6 of CMSA Ordinance No. 2014-1.

A Hydromechanical Grease Interceptor (HGI) shall be connected to the discharge of the portable kitchen unit that is placed on the lot at 19 Broadway Blvd, Fairfax. Due to the space limitations in the portable kitchen unit, there is not sufficient floor space or fall for installation in the portable kitchen unit. The discharge pipe below the portable kitchen unit needs to have sufficient fall and access to remove the lid on top of the HGI to allow access for cleaning. A variance from the minimum HGI size of 35 Gallons Per Minute (GPM) will be allowed in order to accommodate both discharge elevation/fall and access. The variance will allow installation of a low profile 25 GPM HGI connected to the discharge from the portable kitchen unit. High Density Polyethylene (HDPE - Plastic) strongly preferred.

Once all drainage fixture units are installed and connected to the grease trap, CMSA staff must be contacted to perform a dye test to ensure all connections were made properly. In order to comply with CMSA Ordinance 2014-1, the dye test must be performed and a permit issued.

*If the dye test shows that the requirements specified above have not been met or changed in any way without prior approval from CMSA, additional enforcement actions will be taken including administrative or compliance orders with fines of up to \$3000 per day.*

**Please note that this letter is not a permit to construct. You must contact the County of Marin Environmental Health Services and the Town of Fairfax Building Department in order to apply for any required permits and plan approvals.**



19 Broadway Bar and Nightclub  
9/1/16  
Page 2

If you have any questions about this letter, please contact me at ext. 142 or [rcole@cmsa.us](mailto:rcole@cmsa.us).



Robert N. Cole  
Environmental Services Manager

cc: Pricilla VanLiew, MPH, Sr. REHS  
Marin County Environmental Health Services  
3501 Civic Center Drive #236  
San Rafael, CA 94903



Site Plan # A2.5  
“Revised Site Plan”  
Document  
In Town File  
Turned in to town hall  
8/11/16

We thank the Fairfax Building and Planning Department and its staff for its cooperation and patience in the submission of this application.

Sincerely,

Tony DeFrance,  
Majority Owner of 19 Broadway and Myx Lounge  
150 West Oak Knoll Drive.  
San Anselmo, CA 94960

**19 BROADWAY BRIEF SUPPORTING GRANTING USE PERMIT FOR 19 BROADWAY**

**FOOD TRUCK AND PARKING VARIANCE**

**August 17, 2016**

Fax: 415-453-1618

**ATTACHMENT D1**

**TABLE OF CONTENTS****Issue****Statement of Facts****Words Matter...16-24****Conclusion****EXHIBITS:**

- 1. Agreement between CASA MANANA and 19 BROADWAY**
  - 2. Affidavit of Dr. Tony DeFrance**
  - 3. Proposed Findings 16-24 approving use permit for food truck and parking variance**
  - 4. E-mail to Linda Neal and Jim Moore, dated July 22, 2016**
-

## ISSUE

The main issue in this case is whether the Town of Fairfax wants to help 19 BROADWAY and CASA MANANA or harm them. They have the power to do either.

19 BROADWAY partners Dr. Tony DeFrance, Chris McCarthy and Garry Graham have been patrons of the arts for our little town. We have, at our own expense, given the town live music every night for 33 years. We have given live music to over one million fans over those years and have booked over 100,000 musicians. We currently book over 35 bands a month, providing musicians a place to play in our iconic venue, which is known throughout the nation as a great club to play in and to see and hear music.

We don't know of any other Fairfax business that has a national and even international reputation.

The bar business is a science. When we serve food, our patrons likely stay an extra 81 minutes, according to Jon Taffer of BAR RESCUE. We need food service to survive and prosper. The Town has the power to let us team up with CASA MANANA and help both key and important Fairfax businesses survive and prosper.

## STATEMENT OF FACTS:

### Food Truck:

The food truck at 19 BROADWAY has been in operation since August 2015 with the tacit approval of the Town, which has allowed us to remain open and serve food while we applied for a use permit. There has not been one complaint about anything. The food truck serves good, fresh food at very low price and has received rave reviews from our customers at 19 BROADWAY and from the Marin Independent Journal.

On Thursday, July 21<sup>st</sup> we were prepared to accept all of the recommendations proposed by Staff and Resolution 16-24 (Exhibit 3), and thank everyone for their support, and move on. We were ready to concede all the issues raised in my e-mail of July 22<sup>nd</sup>. We made a mistake in sending Exhibit 4, and we regret doing so, as it upset the apple cart.

We do quote from our July 22<sup>nd</sup> e-mail showing how happy we were to receive Staff and Planning's support for our use permit and parking variance. We quote:

"Dear Linda and Jim:...As Linda will attest 19 BROADWAY and the Town have always cooperated and worked through our problems for the past 30-plus years. I assure you we will work through our parking issue with the same spirit of cooperation."

The parking issue I was referring to was whether I had the power to force the Fairfax Inn to change their parking spaces, as we are on separate lots. 19 BROADWAY is on Lot 002-121-23; The Fairfax Inn is on Lot 002-121-24—two separate businesses with two separate tax bills.

As I was ready to concede that issue at the July 21<sup>st</sup> meeting, this question became moot.

Further quoting from that July 22<sup>nd</sup> e-mail:

"In closing I want to thank Linda for all the hard work she put into helping us with the food truck and parking variance. It always amazes me how much paperwork goes into these problems. We really appreciate your support for our use permit for the food truck and parking variance. I'm available to meet when you are. My best personal regards."

We were going to announce at that meeting that we were in negotiations with CASA MANANA to operate our food truck as an employee of 19 BROADWAY. We have since reached an agreement between 19 BROADWAY and CASA MANANA. (Exhibit 1)

We were very disappointed to see the Town's reversal from approval to disapproval. This reversal will cause great harm to both long-term businesses, and we implore the Planning Commission to re-set back to the July 21<sup>st</sup> meeting. Had the July 21<sup>st</sup> meeting not been cancelled, we would have complied with all requests and moved ahead with CASA MANANA.

### **WORDS MATTER:**

At this point every word of the Staff's Background, Discussion and Recommendation must be read into the record along with every word of the Planning Commission's Resolution 16-24.

In summary, Staff and Planning recommended approval of our use permit and parking variance and found that every condition to grant our use permit and parking variance had been met, with three conditions we would have completed within the required time.

### **CONCLUSION:**

The Planning Commission has an opportunity to help CASA MANANA find a home in Fairfax and to help 19 BROADWAY survive and prosper. We respectfully ask you do so, and reset back to the July 21<sup>st</sup> agenda and recommendations.

Exhibit #1

AGREEMENT BETWEEN 19 BROADWAY LLC and CASA MANANA

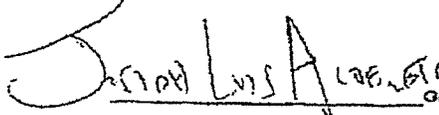
TO WHOM IT MAY CONCERN:

After being in negotiation for about a month, 19 BROADWAY and CASA MANANA have reached an agreement to work together for the common good of their businesses and for the good of the Town of Fairfax.

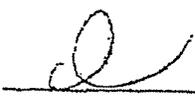
19 BROADWAY has agreed to hire Jashiah Luis Alderete of CASA MANANA to operate the 19BROADWAY food truck and their food operation. CASA MANANA will then proceed to work with Town Staff and Planning to become the sole operator of the food truck under their own name.

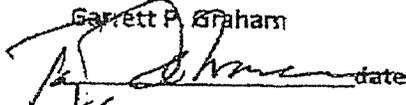
CASA MANANA <sup>HAS BEEN EVICTED SINCE JUNE - BUT HAS REMAINED AT ITS CURRENT</sup> is being evicted in late August, and we dearly want to remain in <sup>LOCATION</sup> Fairfax. 19 BROADWAY has given us a lifeline to do so. <sup>REGARDLESS</sup>

19 BROADWAY needs to serve food to assist in their economic survival and gladly welcomes CASA MANANA to help them do so.

  
Jashiah Luis Alderete on behalf of Casa Manana

Aug 15 2016  
(date)

  
dated 8/15/16 and

Garrett P. Graham  
  
dated 8/16/16 both representing 19 BROADWAY LLC

Dr. Tony DeFrance

Exhibit # 2

AFFIDAVIT OF DR TONY DEFRANCE

My name is DR TONY DEFRANCE. I am the majority partner of 19BROADWAY LLC. I declare under penalty of perjury that in and around May 2015 I explored to cost of putting in a commercial kitchen in the building at 17-19 Broadway. I obtained two bids (Michael Weiss Construction and a second commercial restaurant contractor) and was told that the cost to put in the kitchen would be in the range of \$250,000 to \$300,000. That amount was more than the value of the business and was prohibitive. The consultants informed me that a mobile kitchen would be the most cost effective way to bring food to 19BOADWAY.

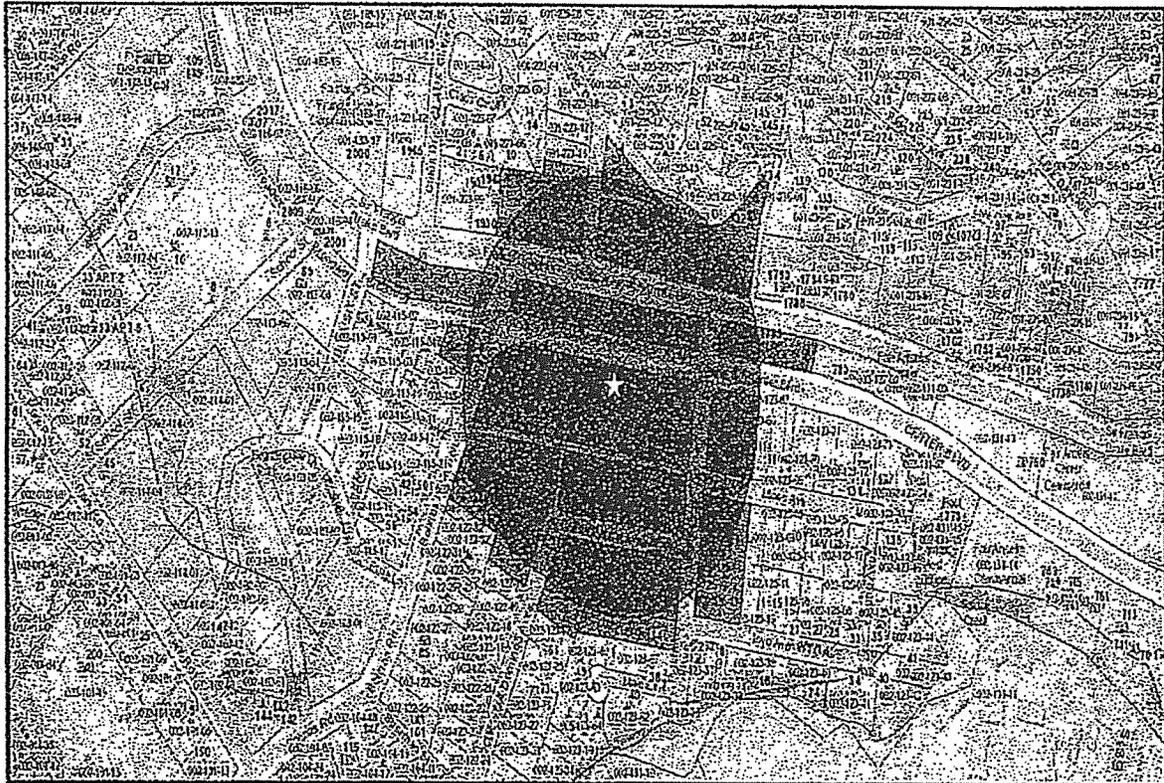
Signed: *Tony DeFrance*

Date: *8/16/16*

Exhibit #3

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

**TO:** Fairfax Planning Commission  
**DATE:** July 21, 2016  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Linda Neal, Principal Planner  
**LOCATION:** 17-19 Broadway; Assessor's Parcel No's. 002-121-23 and 24  
**ZONING:** Central Commercial CC Zone  
**PROJECT:** Food Trailer  
**ACTION:** Use Permit and Exception to the Parking Regulations;  
 Application # 16-29  
**APPLICANT:** Tony DeFrance  
**OWNER:** Garrett and Amory Graham  
**CEQA STATUS:** Categorically exempt, § 15301(a)



**17 AND 19 BROADWAY**

## **BACKGROUND**

The 16,875-square-foot, level site, is developed with multiple uses including a bar and restaurant with 3 apartments above and the Fairfax Inn that contains an on-site manager's apartment and 14 hotel rooms. The uses share the parking lot with the spaces under the Inn building being primarily used by inn patrons and the spaces on the east side of the bar primarily used by the bar and restaurant patrons.

The 3,379-square-foot, bar/restaurant/apartment building was constructed in 1921 as a hotel and restaurant and was converted into a bar and liquor store with apartments above after World War II. The original Conditional Use Permit to operate a nightclub, with live entertainment, at 17 Broadway, was approved by the Town Council on December 8, 1980. The Conditional Use Permit was modified to allow the bar to expand into the liquor store area at 19 Broadway on August 24, 2000.

A Conditional Use Permit (CUP) and, per the terms of that CUP, an exception to the parking requirements, was granted by the Planning Commission in 1995 to allow construction of the 6,022-square-foot Fairfax Inn [Town Code § 17.100.110(2)]. The parking exception was granted to allow the Inn to construct only 26 on-site parking spaces while the Town Code required 31 spaces for all the different uses on the site.

## **DISCUSSION**

### **Conditional Use Permit (CUP)**

Town Code § 17.100.050(A) requires that a Conditional Use Permit be obtained for any use that is not conducted entirely within a building. Therefore, using the food trailer to provide a kitchen for 17 and 19 Broadway requires the approval of a Conditional Use Permit by the Planning Commission.

The applicant is requesting a Conditional Use Permit to legalize the preparation of food in an on-site food trailer for sale in the restaurant at 19 Broadway (the bar is actually 17 Broadway). The trailer is currently parked on site and the business has been preparing food in the trailer for consumption by restaurant patrons since December of 2015.

The owner filed an incomplete application to legalize use of the food trailer on December 3, 2015, and staff has been working with the owner to obtain a complete application since that time. To date, staff has not received an indication of where the required grease separator is or would be located on the property (see Exhibit C). Staff's on-site inspection of the trailer and property on July 14<sup>th</sup>, 2016, in-lieu of a plan showing the location of the grease separator, revealed that the business has been serving food from the food truck without using a grease separator.

The building at 17-19 Broadway is 95 years old. Since its construction the Inn has been built in an "L" shape directly behind it and around the west side with the ADA-accessible hotel unit and outdoor garden area for the hotel fronting on Broadway.

The Building Official believes that a kitchen could be installed inside the bar. However due to the location of the inn and upstairs apartments, the only way to install the required venting system would be to relocate the bathrooms and storage areas at the rear eastern corner of 17 Broadway so the kitchen could be built along the eastern wall adjacent to the parking lot and the venting could be installed out towards the parking lot. The age of the building, the location of residences upstairs and the location of the Inn make it difficult and expensive to construct a commercial kitchen that would comply with current Health Department requirements in the building (Exhibit B – Applicant's Supplemental Information). The applicant has indicated that he has obtained bids for the kitchen improvements that average \$280,000 in cost. Staff has not seen the bids so we are unable to verify whether or not the costs would be as high as the owners have indicated.

The owner and Garry Graham, the bar owner, indicated that due to changing patron tastes and expectations, it is imperative for the fiscal health of 19 Broadway (the bar and nightclub) that they be able to serve foods other than the typical bar food. The owners state that people are expecting more out of the nightclub experience than just good music. This similar need by the general public for a "universal entertainment experience" was voiced last year by the owner of the Fairfax Theatre who applied for, and obtained, an ABC license to allow him to serve food, beer and wine at the theatre in addition to the traditional popcorn and candy fare. He also indicated that the ability to serve food and alcohol was necessary in order for his business to survive fiscally.

One other business owner has indicated that they are not supportive of this growing trend of Fairfax businesses avoiding the expense of upgrading local buildings in compliance with building and health codes by operating from food trucks and trailers (Exhibit E).

### **Parking**

Town Code § 17.100.110(2) states that off street parking and loading in the Central Commercial Zone, for conditional uses, be varied by the terms, provisions or conditions of the use permit.

The property is already operating with a parking space deficit due to the Planning Commission exception granted when the Inn was approved in 1995. The food trailer takes up an additional 2 parking spaces, decreasing the total number of on-site parking spaces to 24. A site inspection on Friday revealed that: a) at least 2 of the existing parking spaces are not available for parking, but are being used as a patio area for the Inn; and b) the accessible parking space provided does not meet code and is not laid out on the site per the parking lot plan that was approved when the Inn was built.

The owner has provided letters from his tenants indicating that they do not have vehicles and therefore, do not use any on-site parking (Exhibit D)

The Department of Planning and Building Services has not received complaints about the trailer causing a parking shortage during the 7 months it has been parked on the site. Conditional Use Permits can be revoked or modified by the Planning Commission at any time should conditions/complaints warrant the revocation or modification of the approval.

### **Design Review**

The trailer is not particularly attractive but it is Staff's position that it does not reach the level of an eyesore because it is set back from the public sidewalk 27 feet, behind the outdoor deck located at the northeast corner of the bar. The owners are willing to paint the trailer one of the following colors – brown (Valspar, Forest Majesty, 31-A), tan (Valspar, Watership Down, 22-1C), blue (Valspar, Majestic Peak, 13-1A) or green (Valspar, Bathing Beauty, 11-1A).

If the Commission determines that painting the trailer would significantly improve views of the trailer from the street, they should determine which of the proposed colors would help the trailer blend into the site and include the painting as a condition of approval in attached Resolution No. 16-24.

### **RECOMMENDATION**

Approve Application # 16-29 for the food trailer and parking exception by adopting Resolution No. 16-24 setting forth the findings and conditions of approval which include but are not limited to the following:

1. The parking lot will be restored within 30 days to its original condition as approved with the plans presented for the Fairfax Inn approval including an accessible parking space that meets the Americans with Disabilities Act regulations.
2. A grease interceptor will be installed adjacent to the trailer that complies with building and health codes within 60 days or the Town will contact the Marin County Health Department and ask them to close the restaurant.
3. The owners will obtain a sign permit for the unpermitted sign at 19 Broadway that reads, "MYX Lounge".

### **ATTACHMENTS**

Attachment A – Resolution No. 16-24

Attachment B – Applicant's supplement information

Attachment C - E-mails and other communication between staff and the applicant

Attachment D – Letter from apartment tenants

Attachment E – Letter from owners of the Fairfax Coffee Roastery

Attachment F – Letters of support

**RESOLUTION NO. 16-24****A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit, Design Review and Exception to the Parking Requirements for a Food Trailer to Provide Kitchen Services for the Restaurant at 19 Broadway**

**WHEREAS**, the Town of Fairfax has received an application to legalize the location and operation of a food trailer in two required parking spaces of the bar/restaurant/nightclub at 17-19 Broadway to provide food service to the establishment; and

**WHEREAS**, the Planning Commission reviewed the matter and at the July 21, 2016, meeting approved the Conditional Use Permit, Design Review Permit and Exception to the Parking Requirements; and

**WHEREAS**, based on the body of evidence submitted for the application, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the requested discretionary permits as long as the conditions below are complied with in a timely fashion; and.

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

1. The age of the existing structure, location of the surrounding uses with residences upstairs and the Fairfax Inn build immediately to the south and west, make it expensive and structurally difficult to install a commercial kitchen inside. Therefore, the approval of the use permit to allow the preparation of the food at the Whistlestop commercial kitchen in San Rafael, in conjunction with its assembly and service from the on-site food trailer shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The restaurant hours of operation are from 5:00 pm to 11:00 pm, Wednesday thru Thursday, from 5:00 pm to 1:30 am, Friday and Saturday and from 1:00 pm to 8:00 pm on Sunday. The trailer is located 39 feet from the adjacent Fairfax Inn units and over 90 feet from the residences on Mono Lane. The residential tenants of the 17-19 Broadway building have been living with the trailer use for over 6 months and the Town has received no complaints. Therefore, the approval of the Use Permit and use of property as approved, 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. Restoration of the shared parking lot to its approved condition will minimize the lot of the 2 parking spaces to the food trailer on surrounding streets and

properties. Therefore, the Conditional Use Permit is consistent with those objectives, goals and standards pertinent to the particular case and contained or set forth in the General Plan and Zoning Ordinance.

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.
5. The white color and clean lines of the food trailer comply with the Design Review Criteria set forth in Town Code § 17.020.040.
6. The main draw at 17-19 Broadway is the musical night life. The main draw will not be the food service from the trailer and most of the food will be served to patrons that are there for the nightly entertainment. Therefore, neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity require strict or literal interpretation and enforcement of the specified regulation.
7. Granting the exception to the parking regulations with this Conditional Use Permit 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.
8. Granting the exception to the parking regulations with this Conditional Use Permit will not create a safety hazard or any other condition inconsistent with the objectives of this title.

**WHEREAS**, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. This approval is limited to the development illustrated on the plans prepared by Rushton Chartock Architects dated 12/1/15, pages A2.1, A2.2 and A4.1
2. Prior to issuance of a building permit for the grease trap interceptor, the applicant or his assigns shall submit 3 sets of plans, a complete building permit application and a deposit in an amount to be determined by the Building Official to the Fairfax Building Department. The submittal plans shall include a site plan showing the location of the grease trap interceptor and waste lines and the location and configuration of the required ADA parking space.
3. Prior to submittal of the building permit plans, the applicant shall secure written approval from the Ross Valley Fire Authority noting the trailer location and setups compliance with any Fire Department regulations and/or conditions.
4. All construction-related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public

- right(s)-of-way at all times. This condition may be waived by the building official on a case by case basis with prior notification from the project sponsor.
5. The roadways shall be kept clean and the site free of dust by watering down the site or sweeping the roadway daily, if necessary.
  6. During construction, the developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 637 (Chapter 8.32 of the Town Code), "Urban Runoff Pollution Prevention".
  7. **Any** changes, modifications, additions or alterations made to the approved set of plans or the interim approved plans described above will require a modification of permit # 16-29. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application # 16-29, will result in the job being immediately stopped and red tagged.
  8. Any damages to the roadways accessing the site resulting from construction activities shall be the responsibility of the property owner.
  9. 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 notifying the applicant of any said claim, action, or proceeding.
  10. 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.

11. The applicants 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 8.32, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
12. 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 Planning Commission (when required).
13. The use of the site shall remain consistent with the stipulations required for the site and contained in this resolution.
14. The applicant shall comply with all conditions of the Marin County Health Department, Ross Valley Sanitary District, Central Marin Sanitation Agency, Ross Valley Fire Department, Fairfax Police Department, the Fairfax Public Works Department and the Fairfax Building Department.

#### **Central Marin Sanitation Agency (CMSA)**

The grease trap interceptor will require the approval of the Central Marin Sanitation Agency if it is located outside the building. CMSA approval in writing will be required before the Building Official finalizes the permit and before the operation of the food trailer will be in compliance with Use Permit # 16-29.

#### **Marin County Environmental Health Department**

The project plans must be submitted and be approved by the Environmental Health Department prior to issuance of the building permit.

#### **Miscellaneous Conditions**

1. Conditions placed upon the project by other agencies or departments can be waived in writing by those agencies or departments. Conditions placed upon the project by the Commission can only be modified or waived by the Commission.
2. The parking lot will be restored within 30 days to its original condition as approved with the plans presented for the Fairfax Inn approval including an accessible parking space that meets the Americans with Disabilities Act regulations.
3. A grease interceptor will be installed adjacent to the trailer that complies with building and health codes within 60 days or the Town will contact the Marin County Health Department and ask them to close the restaurant.

4. The owners will obtain a sign permit for the unpermitted sign at 19 Broadway that reads, "MYX Lounge".

**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of the Town of Fairfax hereby finds and determines that the approval of the Conditional Use Permit and Design Review Permit for the food trailer at 17-19 Broadway is not contrary to the regulations set forth in the Central Commercial CC Zone and will not have a negative impact on surrounding businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 21<sup>st</sup> of July, 2016, by the following vote:

AYES:  
NOES:  
ABSTAIN:

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

Attest:

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

8/8/2016

Print

Exhibit #4

**Subject:** Fwd: 19 broadway parking issue  
**From:** Garrett Graham (gwala75@gmail.com)  
**To:** gwala422@yahoo.com;  
**Date:** Monday, August 8, 2016 1:29 PM

Parking

pp

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

**From:** Garrett Graham <gwala75@gmail.com>  
**Date:** Fri, Jul 22, 2016 at 10:51 AM  
**Subject:** 19 broadway parking issue  
**To:** Linda Neal <lneal@townoffairfax.org>, Jim Moore <jmoore@townoffairfax.org>, Lauren and Tony <defrance@cvcta.com>, Am.ory and Garry <gwala422@yahoo.com>

dear linda and jim

as linda will attest 19broadway and the town have always cooperated and worked through our problems for the past 30 plus years. i assure you we will work through this parking issue with the same spirit of cooperation.

i will become involved from this point forward and the first thing i can do is solve the DISABLED parking issue. i know this is important to mark and the town. i may need a letter from the town to briefly outline the issue and then work with the fairfax inn and get mark to go with me and direct me to the solution. i will probably get tommy bruce to go with mark and me and have him do the work.

then the fairfax inn will be out of the picture and we will deal with just the application of 19brodway and we WILL do what you request re the 19broadway parking issue..

BACKGROUND: the 17,000 foot lot on amory and my property is divided into two separate lots. lot number 002-121-23 is the lot the 19broadway building and parking sits on. lot 24 is the lot the fairfax inn sits on. i leased lot 24 to ramon patel and fairfax investment inc in 1995. the lease runs 49 years which is common in these types of hotel lease deals. ramon has his relative jayu patel running he fairfax inn for the past 21 years. i have a very close business and personal relationship with the patels.

the fairfax inn had nothing to do with our application and once we solve the DISABLED parking issue i request you leave them alone. i know their business and after a record year of making \$300,000 in 2015, and they still did not make a profit, they are having a down year. i do not want the patels to be bothered about the 19broadway parking issue. they know nothing about whats going on about any parking problem and i ask you to please keep it that way. if you persist in enforcing the lack of 2 parking spaces this will have a very negative effect on my relationship with the patels and will not help their business but just be a distraction WHICH they dont need one, especially now.. the only reason this issue was discovered, after being in this same condition for at least 18 of the past 21 years, is because of a walk through--that should not have involved their property.

it is my belief the town should help the fairfax inn in every way possible. they bring a lot of \$ into our town. this 12 unit- inn has plenty of parking 90% of the time. many nights there are no cars there. its very sad to see them struggle on those rare, not very often. nights, when they have a sellout of all 12 rooms there has never been a parking problem. there is no practical or business reason to hassel them about parking now! please just allow things to be as they have been for 18 years.

just because the town has the power to strictly enforce the parking code does not mean they must use or abuse that power. the lack of parking places for most all other businesses in town is well known they cannot provide

8/8/2016

Print

parking but are allowed to operate.. there is no need to be the parking space police when the fairfax inn is one of the rare businesses in town that actually do have a lot of parking places and they have always used the 19broadway parking places, when they have a sellout. . i dont want to get involved in fighting the town over this issue but to me the proper and fair thing to do is let sleeping dogs lie and let things be as they have been for over 18 years. you will be helping a struggling business by doing so.

in closing i want to thank linda for all the hard work she put into helping us with the food truck and parking variance .. it always amazes me how much paperwork goes into these problems.

we really appreciate your support for our use permit for the food truck and parking variance.

im avaiable to meet when you are.

my best personal regards  
garry

# RUSHTON-CHARTOCK

1620 SIR FRANCIS DRAKE BLVD.  
WEB SITE: [www.rushton-chartock.net](http://www.rushton-chartock.net)

P.O. BOX 173 FAIRFAX, CA 94978-0173

# ARCHITECTS

(415) 457-2802 FAX: (415) 457-2873  
Email: [rushtonchartock@comcast.net](mailto:rushtonchartock@comcast.net)

TOWN OF FAIRFAX

December 2, 2015

DEC 03 2015

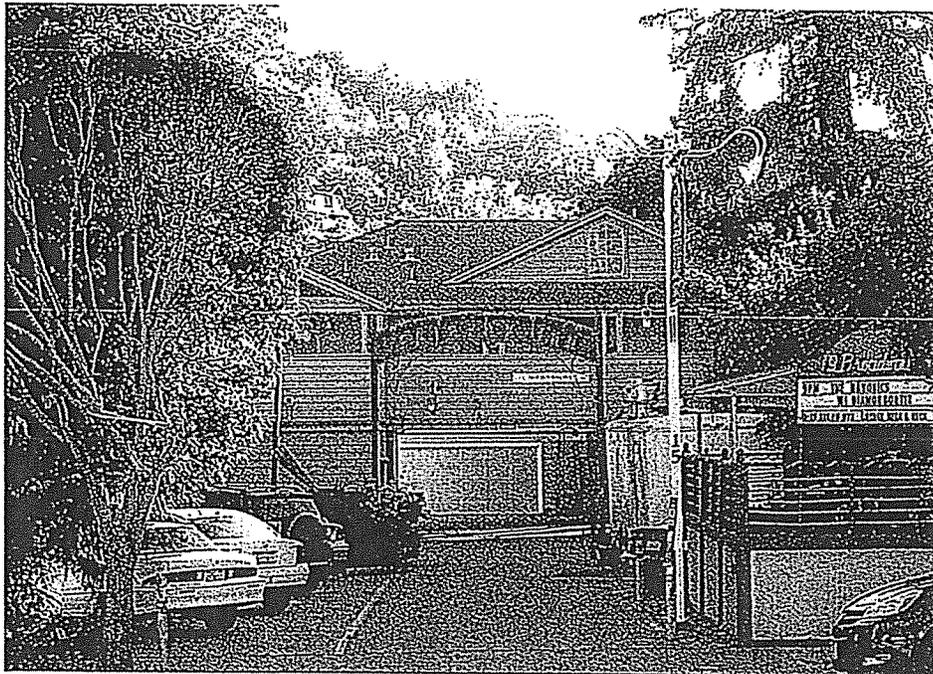
RECEIVED

To: Town of Fairfax  
Planning Commission & Design Review Board  
142 Bolinas Road, Fairfax, CA 94930

Re: Submittal for: Parking Variance, Use Permit, and Design Review  
19 Broadway LLC  
Addition of Mobile Commercial Kitchen at 19 Broadway Parking Area  
Job No. 15126

Enclosed please find the following:

- Project Description
- Supplemental Questionnaire – Variance
- Use Permit Applications
- How Findings for Use Permit Can be Made
- Additional Information
- Project Photos



View toward Fairfax Inn, 19 Broadway outdoor deck on left, Mobile Kitchen beyond

## Project Description:

19 Broadway LLC has been an established bar and nightclub in Fairfax for the last 30 years and has been zoned as a restaurant during that time. We believe it is essential to have the ability to serve food at our venue for a number of reasons including: It will help keep our business viable in challenging economic times, people get less intoxicated when food is served at a bar, people stay longer when food is served at a bar, there are very few late night options for food in Marin County, and there are limited affordable high-quality food options in Marin.

Our plan is to add food service to 19 Broadway LLC. We explored the option of adding a commercial kitchen to the existing building and sought out several bids to do so. There were multiple difficulties identified in putting in a commercial kitchen on either of the two floors at 19 Broadway. Since this building was built around 1920, there are significant construction challenges. Hood venting would be particularly problematic given the location of the hotel, and requirement for venting through the entire second story of the building. Major electrical system upgrades would need to be made to the building as well as ventilation and fire suppression challenges. The cost of adding a commercial kitchen would be close to \$300,000 (have bids) which makes this a non-viable option for our business.

We looked into the possibility of using a mobile kitchen which is linked to an outside commissary kitchen as a solution to providing food at 19 Broadway. This option made the most sense especially since the food component could be added to our existing business which is already zoned for food service. We purchased a food trailer which is parked in our parking lot and currently takes up two of our parking spots. The food trailer is a full commercial kitchen but is primarily used for food assembly and plating as we have an offsite commissary kitchen. We were under the impression that we did not need a use permit since 19 Broadway is already zoned as a restaurant and the food is ordered and served inside the walls of the establishment. We obtained a Marin County Health Department permit and started serving food on July 16<sup>th</sup> 2015. We have recently found out that we do in fact need a use permit from the City of Fairfax since the food is prepared outside of our walls, but on our property. We are now working to obtain our use permit and comply fully with the codes and ordinances of the City of Fairfax.

We have been operating the business for approximately 6 months and have served reasonably priced locally sourced food to hundreds of patrons. The addition of food has had no negative impact on our neighbors or surrounding businesses that we have been informed of. We have received excellent reviews on our food and the improvements it has created to our venue (We can provide Yelp reviews and Facebook reviews). 19 Broadway has been an important part of the Fairfax community for over thirty years and brings thousands of people to the town of Fairfax each month. This directly benefits other businesses in the community. We have determined it is essential that we are able to serve food for our patrons in order to make this a viable business entity and continue to do business in the town of Fairfax. There has been a significant economic downturn in business for all the night life venues in Fairfax over the last 2-3 years and we are working with other businesses in the area to figure out a strategy to help one another survive (Iron Springs, Peri's Bar). We have partnered with the Fairfax Inn to provide food to their guests and have worked with them closely to make sure there is no interference with their business.

We are submitting this application to:

1. Go through the planning process to show location of our mobile kitchen, its positive impact on the town of Fairfax and to request a parking variance as the trailer is parked in our parking lot and currently occupies 2 parking spaces.
2. Obtain a use permit for adding food service to 19 Broadway LLC.

## Supplemental Questionnaire – Variance

### Findings:

The Parking for 19 Broadway LLC and the Fairfax Inn was reviewed and approved for current use in 1996. Our mobile food trailer currently takes up two parking spaces in the 19 Broadway parking lot. Please note that the food trailer is a temporary structure and can be moved at any time, so these parking spots are not permanently lost.

### Special circumstances Question 1:

The food trailer currently takes up two of our parking spots (please see plans). The trailer has minimal visual impact from the sidewalk or the street and both of our commercial neighbors (Fairfax Inn, Fairfax Theater) do not have any issue with the trailer or this project and in fact they support the addition of food to 19 Broadway. In terms of the parking variance we are asking for, there is precedent in the City of Fairfax for business expansion with loss of parking spaces. The Fairfax Theater expanded and remodeled and a parking variance with reduction of the number of spaces was granted to allow for this. We have been in operation for 6 months and have not had any complaints about parking or noticed any difficulties with parking in the area. The Fairfax Inn has not had any difficulty with parking during the 6 months that we have been serving food. We respectfully assert that not granting us a parking variance would be holding us to a higher standard than what other businesses have been held to in the town of Fairfax.

### Question 2:

Our request for a parking variance should have no significant health or safety effects on those residing or working in the area. As above we have been in operation for 6 months and have not received any complaints and there have been no problems with parking in the area. Additionally there is no injury to property or improvements in the neighborhood and as noted above the food trailer is not a permanent structure.

### Question 3:

In order to serve food at our venue, we need a commercial kitchen. We have had consultation and bids from contractors that deal specifically with installation of commercial kitchens. There were a number of major difficulties which they identified in terms of installing a commercial kitchen at the 17-19 Broadway location:

1. The building was built in 1922 and major upgrades would need to be made to electrical system.
2. A commercial hood and venting system would be extremely difficult to install as the hotel is right next to the bar and the area which a commercial kitchen could potentially be installed. The only option they saw was to vent through two stories up to roof and this would require structural evaluation. There is also a concern about venting to roof and the noise that the vent would create for hotel guests.
3. We have limited space in our bar area downstairs to devote to a commercial kitchen
4. Putting a commercial kitchen on the second floor would be extremely challenging and would likely involve additional structural support needs. In addition the access to the second floor is by a set of stairs and this could pose significant problems for the delivery of food to and from the kitchen.
5. The project would be prohibitively expensive for 19 Broadway LLC. The bids came in at \$280,000 and that is before getting into some of the potential structural and engineering issues that will be required.

For these reasons, installing a commercial kitchen within our existing structure is not a viable option. To utilize the food trailer in our parking lot we need to utilize two of our off street parking spots.

1. As noted above in Q3 it would be an extreme hardship to try and add a commercial kitchen to our existing structure.
2. As noted above, other businesses in the area have been granted a variance when an expansion occurred.
3. Strict enforcement of the ordinance we believe would be unfair and cause a hardship given the precedent created with handling of other businesses in terms of parking and the extreme difficulty putting in a permanent commercial kitchen inside the building.
4. The project is in the public interest as we serve high quality locally sourced food at reasonable prices. We have a number of low income local people coming to eat at 19 Broadway because of the pricing of the food. In addition, it is documented that adding food to a bar and nightclub helps reduce intoxication levels of patrons. We also are one of the only venues in the North Bay to serve food past 10pm and we are now serving food for patrons of the Fairfax Inn which helps their business.

## Use Permit Applications:

We are requesting a use permit to serve food at our existing venue, 19 Broadway from a food trailer in our parking lot. We would add the food business to our existing 19 Broadway LLC, which has been zoned for a restaurant for over 30 years. Our food service has been in operation for 6 months as we did not realize we required a use permit as we were adding food service to our existing business. We have a Health Department Certificate from the County of Marin which allows us to operate the food trailer in association with a commissary kitchen where some of the food is prepared.

Food is ordered from inside 19 Broadway and it is served inside 19 Broadway. As noted above, some of the food prep occurs in our commissary kitchen and some occurs inside the food trailer. We typically have one cook and one food runner during busy times. Our hours of operation are:

Wednesday	5p – 11p
Thursday	5p – 11p
Friday	5p – 1:30a
Saturday	5p – 1:30a
Sunday	1p – 8p

We are closed on Monday and Tuesday.

The busiest shifts are typically Friday and Saturday nights from 6p – 12a. The food is priced reasonably and is locally sourced to minimize environmental impact and we also serve farm fresh food.

Our project will not have any negative impact on general public welfare and in fact we have seen the opposite. We have a number of low income Fairfax residents who now come to eat our affordable, high quality food. In addition, we have noted intoxication levels of our patrons has been reduced (we have discussed this with the Fairfax Chief of Police and he is in agreement with this statement). We are not aware of any negative physical or economic impact on adjacent properties and in fact we are working with Fairfax Inn to provide food to their guests.

We have seen a significant downturn in our income over the last 24 months and this is something that is happening at the other nightlife venues in Fairfax as well. We believe the addition of food is essential for our business model and to maintain economic viability for a business that has been in Fairfax for more than 30 years. We are an important part of the Fairfax community and do multiple fund raisers each year for causes in Fairfax as well as for Fairfax residents in need. We draw thousands of people to the town each month. The venue is known nationally as one of the best places to see live music and this adds to the town of Fairfax.

The trailer has minimal visual impact from the sidewalk or the street and both of our commercial neighbors (Fairfax Inn, Fairfax Theater) do not have any issue with the trailer or this project. We are willing to make changes to the exterior of the trailer if the town of Fairfax feels the trailer does not fit in with existing décor.

How findings for use permit can be made:

1. The approval for our use permit does not grant any special privileges to 19 Broadway LLC. We are zoned for a restaurant and it is not feasible to put a commercial kitchen inside our building. We believe it is essential for us to add food to our bar to keep this as a viable business entity. Not granting a use permit would in fact be a hardship for 19 Broadway and may mean we cannot continue to operate the business in the town of Fairfax. We

are also applying for a parking variance from the Town of Fairfax and going through the process to make sure this is a fair and equitable solution.

2. The approval of our use permit will not create a public nuisance or cause any detriment to adjoining properties (please see letters of support from our two neighboring businesses). Although there are a number of restaurants and bars in the town of Fairfax, we do not believe we will create any adverse economic impact for any that already exist. We believe it is fair for us to serve food as well for the reasons outlined above.
3. Approval of our use permit would not be contrary to any goals or objectives or other policies of the town.

Additional information:

In order to serve food at our venue, we need a commercial kitchen. We have had consultation and bids from contractors that deal specifically with installation of commercial kitchens. There were a number of major difficulties which they identified in terms of installing a commercial kitchen at the 17-19 Broadway location:

1. The building was built in 1922 and major upgrades would need to be made to electrical system.
3. A commercial hood and venting system would be extremely difficult to install as the hotel is right next to the bar and the area which a commercial kitchen could potentially be installed. The only option they saw was to vent through two stories up to roof and this would require further structural evaluation to see if it is even an option. We have limited space in our bar area downstairs to devote to a commercial kitchen
4. Putting a commercial kitchen on the second floor would be extremely challenging and would likely involve additional structural support needs. In addition the access to the second floor is by a set of stairs and this could pose significant problems for the delivery of food to and from the kitchen.
5. The project would be prohibitively expensive for 19 Broadway LLC. The bids came in at \$280,000 and that is before getting into some of the potential structural and engineering issues that will be required.

January 2, 2016

JAN 06 2015

Dear Linda,

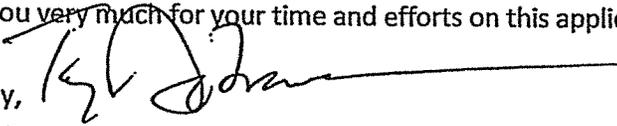
RECEIVED

Please see below for answers to questions posed in your letter of December 10th, 2015 in regards to 19 Broadway.

1. A Title Report will be forthcoming from property owner Garrett P. Graham.
2. Sample colors – please find enclosed several sample colors that we can paint mobile kitchen.
3. Accessible Parking for 17 and 19 Broadway. Property owner Garrett P. Graham has a written agreement with all of the tenants of the property that specify that they are not permitted to own automobiles. Attached are letters from these tenants confirming that they do not own vehicles. Above 17 Broadway is the green room for our venue and no one lives there.
4. Commissary Kitchen – We have a contract with Whistlestop Wheels to use their commercial kitchen. The address is 930 Tamalpais Ave, San Rafael, CA 94901. In the commissary kitchen we typically do preparation and chopping of any meat or vegetables that will be used in the mobile kitchen. We also prepare several sauces in the commissary kitchen. In the mobile kitchen we assemble all of the ingredients, cook them and plate them. More specifically we grill burgers, grill Panini sandwiches, cook chicken in crock pot, deep fry our French fries.
5. Food service –
  - a. How are clients of the Inn handled? Currently we only supply menus in each of the rooms of the Inn. The guests would either walk down to the bar and order their food and eat it there, or there is the option of calling ahead so the food is ready when they get to bar. We do not deliver to the rooms or do any form of room service.
  - b. Will take out food be prohibited? Currently we are not serving food to go. Food is ordered either by placing an order inside the bar, or by calling ahead and placing an order. The food is served inside 17 or 19 Broadway. Customers are not parking in the parking lot to pick up food and take it home.
6. Number of Customers – Although our food is reasonably priced, we have not seen an increase in volume of customers or monthly sales (income) at 19 Broadway since we began serving food on June 15, 2015. Our total income (food + bar) has actually decreased overall when compared month over month to the previous year (2014) in which we did not serve food. The numbers that we can supply to prove this would involve providing our confidential profit and loss statements to you (which we are willing to do as long as they do not become part of public record). We have not had any complaints of more difficulty with parking or experienced any additional problems with parking in our lot since the mobile kitchen has been in operation. The food is meant to complement our Bar and Nightclub, and not be a primary draw to our business. Unfortunately our food is not currently a profitable endeavor.
7. Chamber support – Gary Graham has met with several members of the Chamber of Commerce. Richard Pedemonte will talk to the town on behalf of the Chamber of Commerce in regards to the addition of food to 19 Broadway.

Thank you very much for your time and efforts on this application.

Sincerely,

  
Tony DeFrance, MD

Managing member, 19 Broadway, LLC

# Guil 19

## French Fries

\$5

*Classic - Shoestring fries with seasoned salt and parsley*

*Garlic Parmesan - Tossed with freshly chopped garlic, hand grated parmesan cheese, seasoned salt and parsley*

*Truffle Oil - Tossed with white truffle oil, parmesan cheese, seasoned salt and parsley*

*Sweet Potato - Tossed with hand grated parmesan, seasoned salt and parsley*

*All fries served with house made garlic aioli and ketchup*

## Caprese salad

\$6

*Sweet, fresh sliced tomatoes, soft, fresh mozzarella cheese topped with fresh basil, salt and olive oil on top a bed of arugula greens*

## Paninis

*Italian*

\$8

*Salami, ham and provolone cheese with fresh sliced tomatoes, arugula greens and balsamic vinaigrette grilled between fresh sourdough bread*

*Caprese*

\$8

*Fresh sliced tomatoes, mozzarella & provolone cheeses topped with fresh basil and balsamic grilled on sourdough bread*

*Add a side of fries to any panini*

\$3

## Chicken Taco

\$3

*Chicken breast marinated and slowly cooked in verde sauce, garlic, onions and fresh jalapenos served on a crisp corn tortilla with fresh chopped onion, cilantro, queso fresco and avocado slices then drizzled with sour cream*

## Quesadilla

\$5

*Large flour tortilla grilled with jack, cheddar, queso quesadilla, asadero cheeses and served with sour cream and pico de gallo*

*Add chicken verde*

\$3

## Special: BBQ Pork Slider

\$5

*Marinated and slowly cooked pork in a sweet and spicy house made BBQ sauce served on a toasted bun topped with house made coleslaw*

February 3, 2016

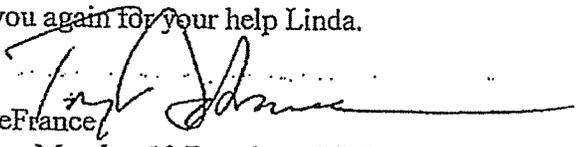
Hello Linda,

In response to the Handicap Space requirement Art Chartock, our Architect stated the following:

We have 24 parking spaces plus the accessible space. Table 11B-208.2 indicates there is only 1 accessible parking space required for 24 parking spaces. I indicated on our site plan that the accessible space is for the Fairfax Inn, but with proper signage I do not see why the accessible space can't be shared by the Inn and the Bar / Restaurant.

In regards to the Grease trap issue I did receive a call from Robert Cole. He is with CMSA which I assume is a State of California agency? Anyway he and I are working on getting the right Grease Trap. Once it is purchased he will inspect and sign off on this. We should have this done in the next seven days.

Thank you again for your help Linda.

  
Tony DeFrance  
Managing Member 19 Broadway LLC.

## Linda Neal

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**From:** Linda Neal  
**Sent:** Monday, June 27, 2016 12:32 PM  
**To:** 'Tony DeFrance'  
**Cc:** Jim Moore; 'gwala75@gmail.com'  
**Subject:** RE: Fwd: completing the 17-19 Broadway application

Hi Tony,

You need to submit plans showing the Commission that you have met all the agency and building code requirements. Photo's will not do. You need to submit floor plans of the trailer and floor plans of the bar/restaurant. I was told by the health department that the sinks were going to be in the bar and now you are indicating they are in the trailer. The site plan needs to be revised to show the location of the grease traps and the location of the accessible parking space. The accessible space is required by Federal and State Law and the plans submitted to the Planning Commission when the Inn was approved showed a conforming space. The space out on the site now, does not conform and it is required to meet certain requirements by the Americans With Disabilities Act. The Town has no authority to grant exceptions to the State and Federal Laws.

Linda Neal  
Principal Planner

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**From:** Tony DeFrance [mailto:defrance@cvcta.com]  
**Sent:** Monday, June 27, 2016 11:42 AM  
**To:** Lisa Mansbridge <lisamans@sbcglobal.net>; Garrett Graham <gwala75@gmail.com>; Linda Neal <lneal@townoffairfax.org>; jmoore@townoffairfax.org  
**Subject:** Re: Fwd: completing the 17-19 Broadway application

Hello Linda,

Thank you for the follow up. We do have a grease trap installed and also have the three required washing sinks inside the food trailer. I can get pictures or see if I have some plans that can demonstrate those.

As far as the accessible parking space I will discuss further with Gary Graham and Art Chartock our architect. We have the same conforming accessible parking space that we share with the hotel that was approved a number of years ago. Our position would be that this was approved previously and we would ask that it still be "grandfathered" in under previous approvals. We are willing to set up a meeting to discuss further.

We would like to resolve the outstanding issues once and for all. To date the addition of food to 19 Broadway has gone smoothly and we have excellent reviews and feedback and this has become an important addition to our business and the town of Fairfax.

Thank you for your help and patience with all of this.

Tony DeFrance, MD

**From:** Linda Neal <lneal@townoffairfax.org>  
**Date:** Mon, Jun 27, 2016 at 8:35 AM

Subject: completing the 17-19 Broadway application

To: "[defrance@cvcta.com](mailto:defrance@cvcta.com)" <[defrance@cvcta.com](mailto:defrance@cvcta.com)>

Cc: Jim Moore <[jmoore@townoffairfax.org](mailto:jmoore@townoffairfax.org)>, Mark Lockaby <[mlockaby@townoffairfax.org](mailto:mlockaby@townoffairfax.org)>, "[gwala75@gmail.com](mailto:gwala75@gmail.com)" <[gwala75@gmail.com](mailto:gwala75@gmail.com)>

Dear Mr. DeFrance,

-

I really would like to get your application completed and onto a Commission agenda. The business is currently in violation of Fairfax Zoning Laws. My understanding is that the only items missing are a floor plan for the bar showing where the required 3 washing sinks are located, any food service areas and where the grease traps are and a site plan showing a conforming accessible parking space (please refer to previous letters dated 3/1/16 and 7/26/16). I really do not want to have to contact the Health Department to advise them that you are not in compliance with the Town Code. Please provide the required plan as soon as possible.

-

Sincerely,

-

Linda Neal

Principal Planner

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# TOWN OF FAIRFAX

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

March 1, 2016

Tony DeFrance  
Managing Member 19 Broadway L.L.C.  
150 Oak Knoll Drive  
San Anselmo, CA. 94960

Dear Mr. DeFrance,

This letter shall serve to notify you that the existing site parking does not comply with the building code accessible parking space and access aisle requirements. Both the parking space and the access aisle need to be 18 feet long. The space needs to be 12 feet wide and the access aisle at least 60 inches wide. The sign designating the space for accessible parking is required to be centered in the front of the parking area. The entire area is supposed to have less than a 2% cross slope. There is also supposed to be signage advising people without disabilities that they cannot park in the accessible space.

A site inspection on March 2, 2016 to verify the site does not meet ADA parking regulations also revealed that some of the parking spaces shown on the site plan prepared by the architect are no longer accessible for parking. These spaces have been converted to outdoor patio seating, an exercise area and storage. The existing and proposed site plans need to be revised to accurately reflect the existing and proposed parking spaces.

We also need to know where the grease trap is going to be installed. Please provide a revised floor plan for 17-19 Broadway that shows where the three sinks required by the Health Department for dishwashing and sterilization are/will be located and where the grease trap will be installed. If the temporary mobile kitchen will need to periodically dump grease into the trap, please provide a site plan and written description of how that will occur.

Until we have the above information your application is incomplete and the restaurant portion of the business is at risk of being shut down for non-compliance with health, building and ADA codes.

Sincerely,

Linda Neal  
Principal Planner

cc. Steve Rosso, Senior REHS, Marin County Environmental Health Services

## Linda Neal

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**From:** Linda Neal  
**Sent:** Tuesday, June 28, 2016 8:17 AM  
**To:** 'Tony DeFrance'  
**Cc:** Jim Moore; 'gwala75@gmail.com'  
**Subject:** RE: completing the 17-19 Broadway application

Excellent. Thanks for working with me.

Linda Neal  
Principal Planner

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**From:** Tony DeFrance [mailto:defrance@cvcta.com]  
**Sent:** Monday, June 27, 2016 1:31 PM  
**To:** Linda Neal <lneal@townoffairfax.org>; Garrett Graham <gwala75@gmail.com>  
**Cc:** Jim Moore <jmoore@townoffairfax.org>; Mark Lockaby <mlockaby@townoffairfax.org>  
**Subject:** Re: completing the 17-19 Broadway application

Okay I understand. We will work on these and bring to you in the next ten days.  
Thank you.  
Tony

On Jun 27, 2016, 1:20 PM -0700, Garrett Graham <[gwala75@gmail.com](mailto:gwala75@gmail.com)>, wrote:

hi linda

the economic survival of one of your towns most visible businesses may be at stake.

the handicap parking is the same since 1995 and our parking configuration and spaces are also the same. they have been approved by the town twice.

we are hopeful town staff will get us to an approval of our variance and use permit.

thank you  
garry

On Mon, Jun 27, 2016 at 8:35 AM, Linda Neal <[lneal@townoffairfax.org](mailto:lneal@townoffairfax.org)> wrote:

Dear Mr. DeFrance,

I really would like to get your application completed and onto a Commission agenda. The business is currently in violation of Fairfax Zoning Laws. My understanding is that the only items missing are a floor plan for the bar showing where the required 3 washing sinks are

located, any food service areas and where the grease traps are and a site plan showing a conforming accessible parking space (please refer to previous letters dated 3/1/16 and 7/26/16). I really do not want to have to contact the Health Department to advise them that you are not in compliance with the Town Code. Please provide the required plan as soon as possible.

Sincerely,

Linda Neal

Principal Planner