



MEETING DATE: 8-6-2007

AGENDA ITEM:

10

COUNCIL AGENDA REPORT

DATE: JUNE 26, 2007
TO: MAYOR AND TOWN COUNCIL
FROM: ORRY P. KORB, TOWN ATTORNEY
SUBJECT: ADOPT RESOLUTION APPROVING A REQUEST TO MODIFY AN EXISTING CONDITIONAL USE PERMIT TO ALLOW THE SERVICE OF BEER & WINE WITH MEALS (MAIN STREET BURGERS) ON PROPERTY ZONED C-2. APN: 510-45-075. CONDITIONAL USE PERMIT U-07-142. PROPERTY LOCATION: 20 S. SANTA CRUZ AVENUE, SUITE 200. PROPERTY OWNER: JOHN FEECE, SIERRA MANAGEMENT. APPLICANT: ED RATHMANN.

RECOMMENDATION:

Adopt resolution approving a request to modify an existing conditional use permit to allow the service of beer and wine with meals on property zoned C-2.

DISCUSSION:

On June 18, 2007, Council approved an application to modify an existing conditional use permit to allow the service of beer and wine with meals on property zoned C-2. The attached resolution finalizes that decision.

Attachment: Proposed Resolution

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

Reviewed by: PSJ Town Manager, Assistant Town Manager, Clerk, Finance, Community Development

Rev: 8/2/07 1:33 pm

Reformatted: 7/19/99

RESOLUTION

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS APPROVING A REQUEST TO MODIFY AN EXISTING CONDITIONAL USE PERMIT TO ALLOW THE SERVICE OF BEER & WINE WITH MEALS (MAIN STREET BURGERS) ON PROPERTY ZONED C-2.

APN: 510-45-075

CONDITIONAL USE PERMIT: U-07-142

PROPERTY LOCATION: 20 S. SANTA CRUZ AVENUE, SUITE 200

PROPERTY OWNER: JOHN FEECE, SIERRA MANAGEMENT

APPLICANT: ED RATHMANN

WHEREAS:

A. This matter came before Council for public hearing on June 18, 2007, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated June 8, 2007, along with any and all subsequent reports and materials prepared concerning this application.

C. On July 28, 2004, the Planning Commission approved a Conditional Use Permit (CUP) for a high-turnover, sit-down restaurant (Main Street Burgers) at 20 S. Santa Cruz Avenue, Suite 200. On October 27, 2004, the Commission approved a modification to the CUP to allow an outdoor dining area for the joint use of Main Street Burgers and Cold Stone Creamery.

D. On April 25, 2007, the Planning Commission considered the subject application requesting modification of an existing CUP to allow the service of beer and wine on property zoned C-2. The Commission voted to recommend denial based on

concerns about how the outdoor patio would be policed and the potential for minors to obtain alcohol.

E. Applicant seeks approval to modify its CUP to allow for service of beer and wine in conjunction with food service for an existing restaurant. Applicant does not intend to have a stand alone or separate bar, provide any entertainment at the restaurant, or operate past 10 PM. Applicant will require that patrons be served a lunch or dinner meal before being served alcoholic beverages, as required by the Town's Alcohol Policy, and that service of alcohol in approved existing outdoor seating areas be separated from public areas with a physical barrier. The outdoor patio will be closely monitored by the Los Gatos-Monte Sereno Police Department and the Los Gatos Community Development Department to ensure that the conditions found in this CUP as well as the Town's Alcohol Policy are followed. Failure to follow these conditions or the Town's Alcohol Policy will result in the necessary and appropriate corrective action.

F. Town Council finds as follows:

i. Pursuant to Town Code section 29.20.190, the proposed use of the property is desirable to the public convenience; will not impair the integrity and character of the zone; would not be detrimental to public health, safety or general welfare; and is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code. Evidence in the record demonstrates that the proposed modification to the CUP would encourage (1) economic and social activity consistent with a small-scale, small town atmosphere and image, (2) the development and retention of locally-owned stores and shops, (3) the preservation of downtown Los Gatos as the historic center of the Town with goods and services for local residents while maintaining the existing Town

identity, environment and commercial viability, (4) outdoor service of alcohol in the patio area will be closely monitored by the applicant's employees, the Director of the Department of Community Development and the Chief of Police to ensure compliance with conditions of approval, and (5) alcohol service will terminate at 10:00 p.m. notwithstanding approved hours of operation that allow the applicant to remain open until 11:00 p.m.

ii. Pursuant to the Town Alcohol Policy, the applicant has an established positive record of compliance with its conditions of approval and Town law. In addition, Council finds that the Alcohol Policy is clear in its application in that it does not set quotas regarding restaurants allowed to serve alcohol. Instead, the Alcohol Policy requires a case by case analysis of each application, which may be approved or denied on its own merits consistent with Town standards for alcohol service. Regarding alcohol service in a business that serves youth, a youth friendly business differs from a business that is youth oriented in that the former can provide alcohol service without endangering youth so long as the business complies with its conditions of approval and alcohol related laws and regulations, and parents properly supervise their children. On the other hand, a youth oriented business, i.e., one that is dedicated to provide services and activities for youth, may not be an appropriate for alcohol service.

iii. The project is categorically exempt from environmental review pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

iv. The proposed use is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (section IV.B), as evidenced by the staff report prepared for the public hearing on March 5, 2007.

RESOLVED:

1. Application U-07-142 is approved.
2. The Conditions of Approval attached hereto as Exhibit A are adopted as the Conditions of Approval of this permit.
3. The decision constitutes a final administrative decision pursuant to California Code of Civil Procedure section 1094.6 as adopted by Section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by California Code of Civil Procedure section 1094.6, or such shorter time as required by state or federal law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California held on the _____ day of August 2007 by the following vote.

COUNCIL MEMBERS:

AYES: Steve Glickman, Barbara Spector, Diane McNutt,
Mayor Joe Pirzynski
NAYS: None
ABSENT: None
ABSTAIN: Mike Wasserman

SIGNED: _____
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA