



TOWN OF LOS GATOS
PLANNING COMMISSION STAFF REPORT
Meeting Date: October 28, 2015

ITEM NO: 6

PREPARED BY: Marni F. Moseley AICP, Associate Planner
mmoseley@losgatosca.gov

APPLICATION NO.: Conditional Use Permit Application U-15-006

LOCATION: **52 N. Santa Cruz Avenue** (Located on the east side of N. Santa Cruz Avenue, 70 feet north of Elm Street)

**APPLICANT/
CONTACT PERSON:** Rick Sutherland

PROPERTY OWNER: Creamery II Investors LLC

APPLICATION SUMMARY: Requesting approval to operate a formula retail store (ClickAway Wireless) on property zoned C-2. APN 529-03-035.

DEEMED COMPLETE: August 4, 2015
FINAL DATE TO TAKE ACTION: February 4, 2016

RECOMMENDATION: Approval, subject to conditions.

PROJECT DATA:

General Plan Designation:	Central Business District
Zoning Designation:	C-2 Central Business District
Applicable Plans & Standards:	None
Parcel Size:	9,341 sq. ft.
Surrounding Area:	

	Existing Land Use	General Plan	Zoning
North	Commercial	Central Business District:	C-2
West	Commercial	Central Business District	C-2
South	Commercial	Central Business District	C-2
East	Town Parking Lot	Central Business District	C-2

CEQA: The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

FINDINGS:

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Categorically Exempt, Section 15301: Existing Facilities.

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
- As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.

CONSIDERATIONS: None.

ACTION: The decision of the Planning Commission is final unless appealed within ten days.

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval (one page)
4. Letter of Justification (three pages), received August 4, 2015
5. Map of Formula Retail Businesses (one page)
6. Floor Plan (one page), received June 30, 2015

BACKGROUND:

In November 2002, the Town Council adopted an ordinance defining a "formula retail business" as a retail business which, along with seven or more other business locations is required by contractual or other arrangement to maintain any of the following: standardized merchandise, services, décor, uniforms, architecture, colors, signs or other similar features. Town Code Section 29.20.185 requires a Conditional Use Permit (CUP) for a formula retail business of any size in the C-2 zone.

The existing use is Motor Cellular which began operating in 2004 and, at that time, the business was determined not to be a formula retailer in that it was a privately owned and operated wireless retailer. As a result, the use and signage were approved by staff. Over the last few years, the Town has refined the way that the formula retail use is defined and today, the existing operation would be considered a formula retailer due to its signage and contractual arrangement with Verizon Wireless. The Town does not retroactively require previously approved businesses to obtain a CUP; however, when the business owner of Motor Cellular connected with ClickAway wireless in 2013 to obtain the necessary financial backing needed to continue to operate, the Town informed the business of the CUP requirement due to the formula retail characteristics.

While the current agreement is to keep the Motor Cellular name, additional ClickAway Wireless signage has been installed and an application to transfer the business license to ClickAway Wireless has been submitted.

PROJECT DESCRIPTION:

A. Conditional Use Permit

When reviewing a Conditional Use Permit, the deciding body should consider the information in the applicant's business plan; however, the key consideration should be the explicit proposed use since the business plan can change from owner to owner. The explicit use may be, and is often, defined in the recommended conditions of approval as a "use" condition. The CUP runs with the land, and the deciding body should review applications based on the explicit use as opposed to the applicant or the applicant's business plan. For example the CUP would potentially permit Verizon Wireless or another national carrier to operate within the space if the current tenant were to vacate.

B. Location and Surrounding Neighborhood

The project site is located on the east side of N. Santa Cruz Avenue, 70 feet north of Elm Street.

C. Zoning Compliance

A formula retail use is permitted in the C-2 Zoning District subject to the approval of a Conditional Use Permit.

ANALYSIS:

A. Project Summary

The applicant is proposing to continue to operate the existing wireless retailer Motor Cellular while the owner of the business would be ClickAway Wireless. The "partnership" would provide additional online visibility for the retailer through ClickAway Wireless resources, but the everyday operation and appearance of the business is not proposed to change (Exhibit 4).

B. Formula Retail

Town Code requires a CUP for a formula retail business of any size in the C-2 zone (Section 29.20.185). The proposed formula retail business will occupy a space not previously occupied by a formula retail business. ClickAway Wireless will be the eleventh formula retail business located within subarea B (Exhibit 5).

The General Plan states that retail uses should be emphasized in the Central Business District where the subject space is located. ClickAway Wireless has 33 locations

throughout California, including one on Los Gatos Boulevard. ClickAway Wireless would continue to contribute to the retail mix in the Central Business District due to it being the only wireless retailer in the District. Staff supports the project for this reason.

C. Parking and Traffic

The previous retail use and the proposed formula retail use have the same parking and traffic generation rates, therefore, neither parking nor traffic will be impacted by the proposed application.

D. General Plan

The goals and policies of the 2020 General Plan applicable to this project includes but is not limited to:

- Policy LU-9.2 – Maintain a variety of commercial uses, including a strong Downtown commercial area combined with Los Gatos Boulevard and strong neighborhood commercial centers to meet the shopping needs of residents and to preserve the small-town atmosphere.
- Goal LU-10 – To preserve 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 vitality.

E. Environmental Review

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

F. Conditional Use Permit

In order to grant approval of a Conditional Use Permit for a Formula Retail Business, the deciding body must make the following findings:

- (1) The proposed use of the property is essential or desirable to the public convenience or welfare; and
- (2) The proposed use will not impair the integrity and character of the zone; and
- (3) The proposed use would not be detrimental to public health, safety or general welfare; and
- (4) The proposed use of the property are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.

In regards to the first finding, the proposed use would be considered desirable in that the wireless retailer is the only provider within the Central Business District and provides a necessary convenience to the community. As required by finding two, the proposed application will continue to provide an existing use and will not take away from the retail oriented focus of the Central Business District. In regards to the third finding, the formula retail business will not be detrimental to public health, safety or general welfare. In regards to the final finding, the proposed use is in harmony with the General Plan and Town Code as addressed in the preceding discussion.

PUBLIC COMMENTS:

At this time, the Town has not received any public comment.

SUMMARY AND RECOMMENDATION:

A. Summary

The applicant is proposing to continue to operate the existing wireless retailer within the existing tenant space. The financial backing provided by ClickAway Wireless will help the retailer continue to provide a personal retail experience consistent with their operation over the last decade. Traffic and parking will not be impacted by the proposed use.


B. Recommendation

Based on the analysis above, staff recommends approval of the Conditional Use Permit subject to the recommended conditions of approval (Exhibit 3). If the Planning Commission finds merit with the proposed project, it should:


1. Find that the proposed project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities (Exhibit 2); and
2. Make the required findings as required by Section 29.20.190 of the Town Code for granting approval of a Conditional Use Permit (Exhibit 2) (Note: if the application is approved the findings for denial will be removed); and
3. Make the required finding as required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the uses set forth in the Town's General Plan (Exhibit 2); and
4. Approve Conditional Use Permit application U-15-006 with the conditions contained in Exhibit 3.

If the Commission has concerns with the proposed use, it can:

1. Continue the matter to a date certain with specific direction; or
2. Approve the application with additional and/or modified conditions; or
3. Deny the application and make the required findings for denial (Exhibit 2) (Note: if the application is denied the provided findings for approval would be removed from Exhibit 2).



Prepared by:
Marni F. Moseley, AICP
Associate Planner



Approved by:
Laurel R. Prevetti
Town Manager/ Community Development
Director

LRP:MFM:cg

cc: Rick Sutherland, 457 E. McGilincy Lane, Campbell, CA 95008
Creamery II Investors LLC, 1777 South Bascom Avenue, Suite D, Campbell, CA 95008

52 North Santa Cruz Avenue



EXHIBIT 1

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PLANNING COMMISSION – October 28, 2015
REQUIRED FINDINGS:

52 N. Santa Cruz Avenue

Conditional Use Permit Application U-15-006

Requesting approval of a formula retail store (ClickAway) in a commercial space currently occupied by a mobile retail store (Motor Cellular) on property zoned C-2. APN 529-03-035.

PROPERTY OWNER: Creamery II Investors LLC

APPLICANT: Rick Sutherland

FINDINGS

Required finding for CEQA:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15301: Existing Facilities.

Required findings for a Conditional Use Permit:

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit:

The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of the Town Code if it finds that:

- (1) The proposed use of the property is essential or desirable to the public convenience or welfare in that the wireless retailer is the only provider within the Central Business District and provides a necessary convenience to the community; and
- (2) The proposed use will not impair the integrity and character of the zone in that the proposed application will continue to provide an existing use and will not take away from the retail oriented focus of the Central Business District; and
- (3) The proposed use would not be detrimental to public health, safety, or general welfare in that the proposed permit conditions regarding operating hours, and use will mitigate potential impacts; and
- (4) The proposed use of the property is in harmony with the various elements or objectives of the General Plan and Town Code.

Required findings for Denial of a Conditional Use Permit for a Formula Retail Business:

- The deciding body, on the basis of the evidence submitted at the hearing, may deny a conditional use permit for a formula retail or personal service business if any of the following findings are made:
 - (1) The proposed use of the property is not in harmony with specific provisions or objectives of the general plan and the purposes of this chapter;
 - (2) The proposed use will detract from the existing balance and diversity of businesses in the

commercial district in which the use is proposed to be located.

- (3) The proposed use would create an over-concentration of similar types of businesses, or;
- (4) The proposed use will detract from the existing land use mix and high urban design standards including uses that promote continuous pedestrian circulation and economic vitality.

Required finding for the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area:

- That the proposed project is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (Section IV.B) in that the subject property is designated commercial and the proposed use falls under general commercial uses.

PLANNING COMMISSION – October 28, 2015
CONDITIONS OF APPROVAL

52 N. Santa Cruz Avenue

Conditional Use Permit Application U-15-006

Requesting approval of a formula retail store (ClickAway) in a commercial space currently occupied by a mobile retail store (Motor Cellular) on property zoned C-2. APN 529-03-035.

PROPERTY OWNER: Creamery II Investors LLC

APPLICANT: Rick Sutherland

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development, the Development Review Committee, the Planning Commission, or Town Council, depending on the scope of the change(s).
2. **EXPIRATION OF APPROVAL:** The Conditional Use Permit will expire two years from the date of approval, unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. **HOURS OF OPERATION:** Maximum hours of operation shall be 9:00 a.m. to 7:00 p.m. daily.
4. **USES:** The approved use is for a formula wireless retail store.
5. **SIGN PERMIT:** A sign permit is required for any new signs or any change of existing signs.
6. **CERTIFICATE OF USE AND OCCUPANCY:** A Certificate of Use and Occupancy must be obtained prior to commencement of use.
7. **BUSINESS LICENSE:** A business license is required from the Town of Los Gatos Finance Department prior to commencement of use.
8. **TOWN INDEMNITY:** Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

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August 4, 2015

Town of Los Gatos
110 E. Main St
Los Gatos, CA 95030

RECEIVED

AUG 04 2015

TOWN OF LOS GATOS
PLANNING DIVISION

Letter of Justification:

Dear Town of Los Gatos:

ClickAway is a retail company that has taken ownership of Tim Cannard's Verizon Wireless Motor Cellular Company. Tim has owned the business for the last 15 years and has decided that teaming up with ClickAway is the best solution for him, his family and his business. In doing so Tim has taken on a position with ClickAway as General Manager of the Verizon Wireless Motor Cellular store in Los Gatos. Tim will continue to be an active partner and will continue to run the day to day operations of his business. ClickAway is owned by Rick and Lani Sutherland who have been residents of Los Gatos for over 30 years and own another Verizon Wireless store next to Nob Hill on Los Gatos Boulevard.

We understand there may be concerns about changes that may be planned for the store but we can assure you that there will be none. The business will remain a Verizon store, the name Motor Cellular will remain and there are no plans to change the business or the operations in the future. The physical nature of the store will not be altered and the signage and store logo will remain the same. Logos on the door and windows do change periodically as before since

they are detailed by our partnership with Verizon. The store and the uses will remain the same and will not harm the integrity or character of Down -Town Los Gatos. The partnership between Motor Cellular and ClickAway will continue to work towards a successful business providing great customer service and value and add more economic stability to the Town of Los Gatos.

Rick and Lani's contributions to the business will be advertising and marketing through the San Jose Mercury News, Los Gatos Weekly, Yelp, Google AdWords, and on our website as well as sponsorship and participation of town events and youth sports teams,

Rick will be actively involved in the implementation of professional business processes and procedures to insure the success of the business. We have already increased business hours to provide more convenience to our customers and have a larger staff that will further improve an already high level of customer service for our Los Gatos customers. We have also invested a significant amount of capital to increase inventory, store security and to increase compensation to the staff.

Sincerely,



Rick Sutherland
ClickAway



Tim Cannard
Motor Cellular

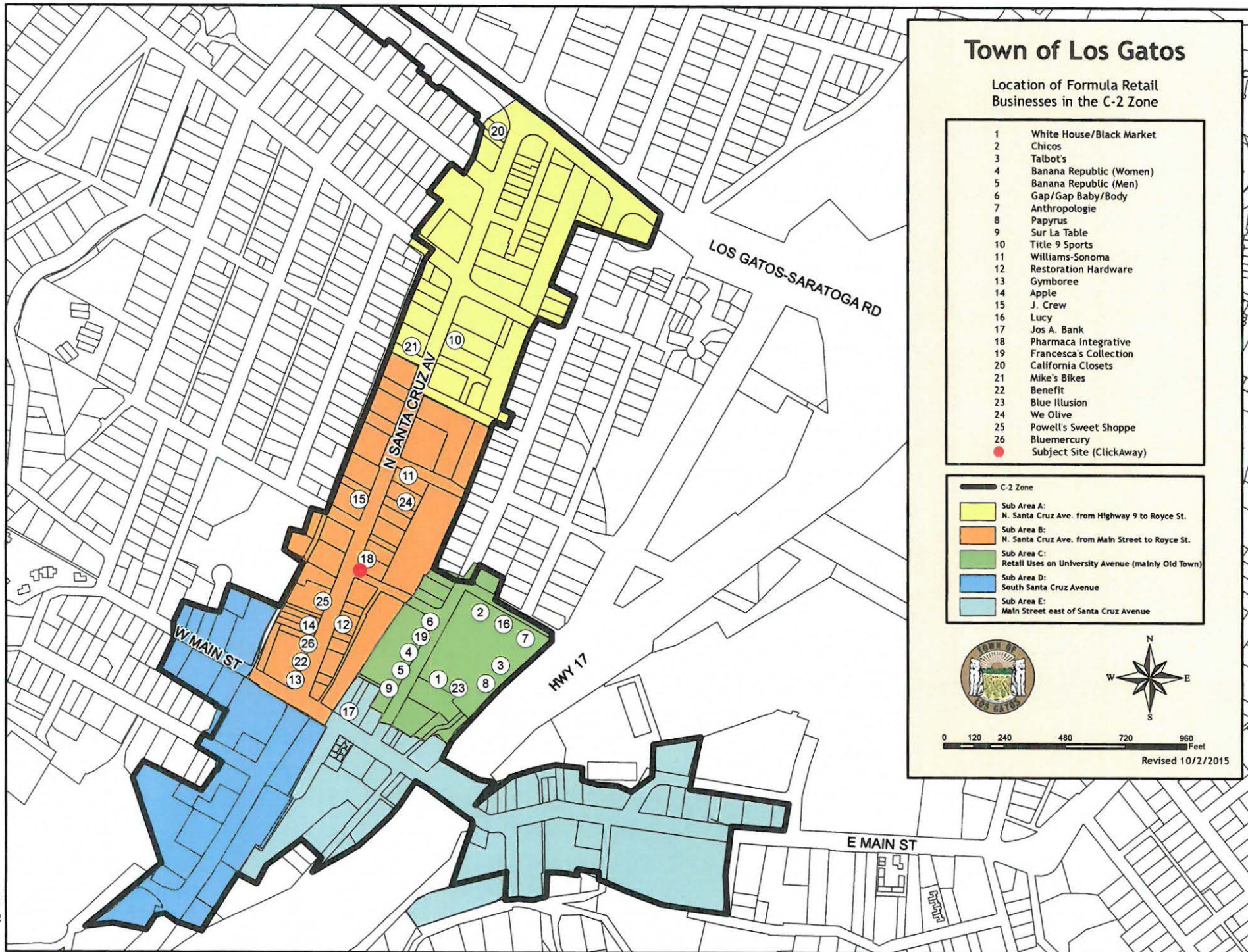


Google 52 N Santa Cruz Ave



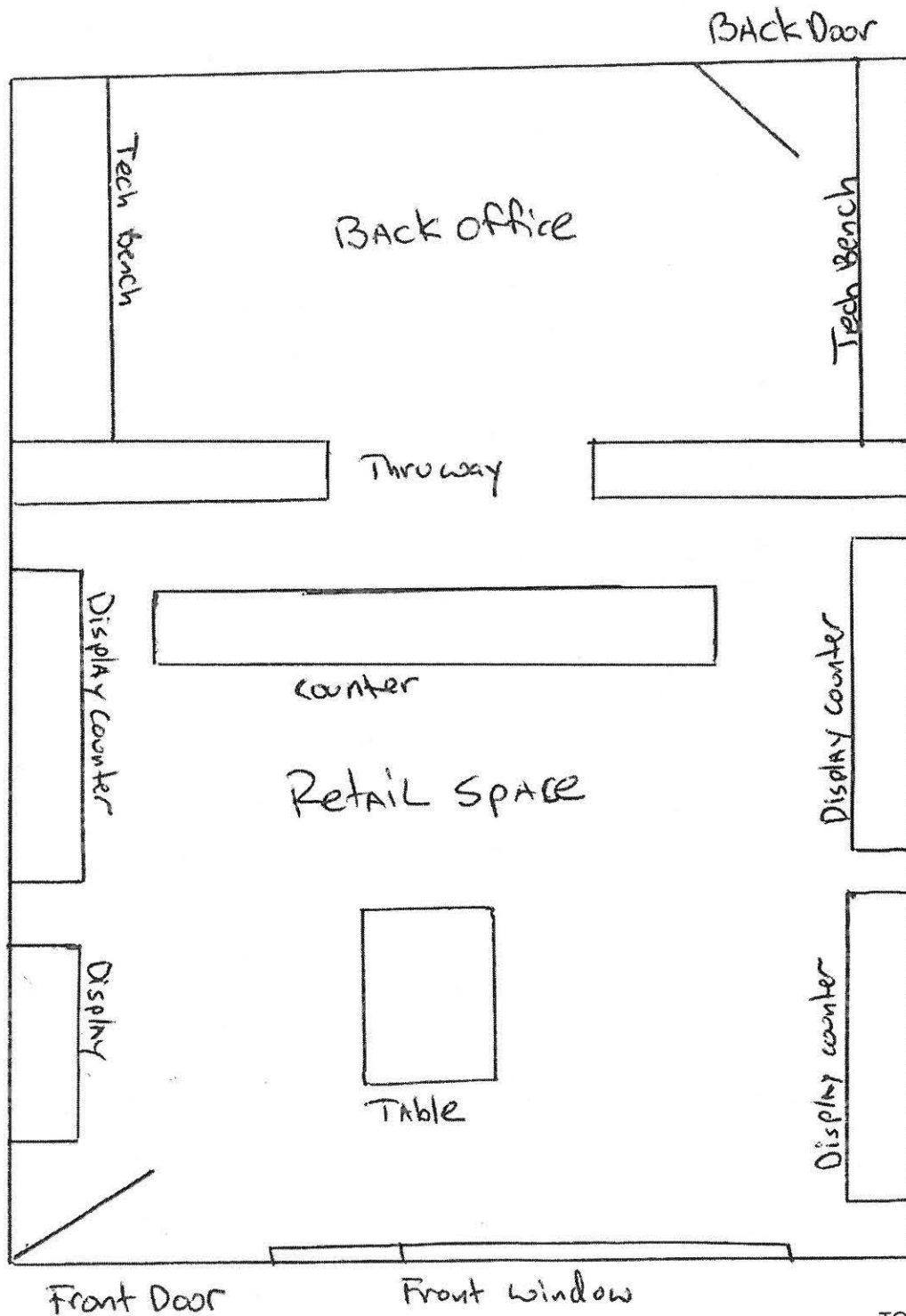
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Floor Plan For Clickaway - Motor Cellular 6/25/15
* Please note that Floor Plan is the same as it has been since 2004. No changes Planned, No increase in Square Footage as per lease. Sq Footage is 875 Ft.



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JUN 30 2015

TOWN OF LOS GATOS
PLANNING DIVISION

Li-15-006

EXHIBIT 6

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