



MEETING DATE: 8/1/05

ITEM NO.

10

COUNCIL AGENDA REPORT

DATE: July 21, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER A REQUEST TO MODIFY A CONDITIONAL USE PERMIT TO EXPAND AN EXISTING RESTAURANT, ADD ADDITIONAL SEATS AND FOR AN ALTERNATING USE OF PARKING ON PROPERTY ZONED C-2. APN 529-03-035. PROPERTY LOCATION: 42/44 ELM STREET PROPERTY OWNER: MICHAEL T. COBLER APPLICANT: NICHOLAS A. DIFU

RECOMMENDATION:

1. Hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Approve or deny the application. If the application is approved, make the required findings (Attachment 1) and approve the application subject to conditions (Attachment 2).
4. Refer to the Town Attorney for preparation of the appropriate resolution.

PROJECT SUMMARY:

The applicant is requesting approval to modify a conditional use permit to expand an existing 668 square foot restaurant into an adjacent personal service space, to increase the seating from 12 to 50 and to allow for an alternating use of parking. If approved, the restaurant will be 1,218 square feet in size.

DISCUSSION:

The applicant is a proposed tenant, not the current owner of the Café Rouge restaurant. It has come to the Town's attention that there is a dispute regarding the lease arrangement between the current

(Continued on Page 2)

PREPARED BY:

BUD N. LORTZ
DIRECTOR OF COMMUNITY DEVELOPMENT

Reviewed by: PSJ Assistant Town Manager OK Town Attorney _____ Clerk _____ Finance
✓ Community Development Revised: 7/21/05 5:58 pm

owner of the restaurant and the property owner. This is not an issue that the Town is involved in and should be left to the property owner and the current restaurant operator to resolve.

The primary issues that need to be evaluated by Council are: (1) the expansion of a restaurant into a personal service space, (2) whether the existing tenant spaces are viable for retail use, and (3) and the alternating use of parking. These issues are discussed below. The Planning Commission staff report (Attachment 5) provides additional background information about this application.

Restaurant Expansion - The Town has adopted two ordinances that apply to this application. First, in 2004, the Town Council adopted an Ordinance to regulate personal service businesses. Regulations were adopted since the increase in the number of personal service businesses was found to be a possible threat to the Town's unique retail environment by displacing retail businesses. Second, in 1996, the Town Council amended the Town Code to provide a more comprehensive review of additional restaurant uses in the Downtown area. It was found that an over concentration of restaurants in the Downtown would displace retail uses that are vital to continued success of the Downtown retail environment. The intent of the amendment is to discourage the displacement of retail uses by new restaurant uses. Although the approval of this application would eliminate a personal service business, it would also reduce the possibility of a retail use to occupy either of these tenant spaces in the future.

Approval of this request will also create a full restaurant operation given the existing restaurant only has a minor kitchen prep area and the proposed use will include a full kitchen. Historically, the existing restaurant space was initially a retail bakery. The bakery was converted to a high turnover (sit down) restaurant and was issued a Conditional Use Permit (CUP) in 1992. It has remained a high turnover restaurant since that time under different ownerships. The CUP was modified in 2000 to allow beer and wine to be served with meals. This application, if approved, would change the high turnover restaurant to a quality restaurant. The applicant proposes to create an upscale "white cloth" dining atmosphere (see Exhibit C of Attachment 5 for a complete description of the proposed restaurant operation). This space has not had a use unrelated to food sales or service.

Potential Conversion of Existing Tenant Space to Retail Use - Council should consider whether or not the existing restaurant and personal service tenant spaces are viable locations for retail uses. While there is some foot traffic that passes in front of these spaces related to people walking to and from the Town parking lots, the tenant spaces are not considered prime retail tenant space. It is questionable what type of retail use would find this tenant space attractive from a business perspective. With the exception of the Lite Line lighting store on Elm Street and Romantiques Lingerie at the corner of Elm and University Avenue, there are no retail uses that have their sole frontage on Elm Street, Grays Lane or Royce Street. Consequently, retail businesses may have a difficult time surviving in either of these tenant spaces.

Parking - The required parking for the existing uses at the subject property is 15 spaces. The subject property has 15 parking spaces with the Parking Assessment District (PAD). There are no on site parking spaces. The proposed application requires nine additional parking spaces

when taking into account the additional seating and loss of the personal service business. In order to meet the parking requirement, the applicant is requesting approval for an alternating use of parking for nine parking spaces credited to the property located at 227 Almendra Avenue. In 2002, Town Council approved a zone change of the Almendra property from Office to Single Family Residential. Subsequently, a new house was constructed on the vacant lot. The Almendra property has a parking credit of 15 parking spaces in the PAD. Therefore, the parking spaces credited to the Almendra site are unused. A transfer of these parking credits is permitted by Section 29.10.150(e) of the Town Code through the Conditional Use Permit process. Approval of this request must be supported by findings that the alternating use of such spaces will not result in fewer parking spaces than required for the use. As stated earlier, none of the parking spaces are required for the Almendra property. Written agreements between the subject property owner and the owner of the PAD spaces are required as a condition of approval to verify the parking arrangement.

The Town has approved numerous requests for an alternating use of parking. These approvals involve staggering hours of operation of the businesses to ensure that the parking is available when needed by each use. Contracts and lease agreements are required and there is always the possibility that the spaces will become unavailable in the future. Consequently, lease agreements must be provided annually to ensure parking is available. This proposal is unique in that the available parking credits have no encumbrances. The person who owns these parking credits will sell them to the owner of the subject property. This is the cleanest approach for approving an alternating use of parking since the parking credits will be permanently transferred to the subject property.

PLANNING COMMISSION:

The Planning Commission considered this matter on May 25, 2005 and denied the application on the basis that the proposal is not consistent with the General Plan in that the proposed use is not of a small scale, small town atmosphere and image. The Commission also felt that the expansion would eliminate the potential for retail use of the subject spaces. The verbatim transcript of the Planning Commission meeting is included as Attachment 4.

ENVIRONMENTAL ASSESSMENT:

As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.

FISCAL IMPACT: None

Attachments:

1. Required findings.
2. Recommended conditions of approval.
3. Alcoholic Beverage Policy
4. Verbatim minutes from the Planning Commission meeting of May 25, 2005 (previously

July 21, 2005

submitted to Council).

5. Report to the Planning Commission from the Development Review Committee dated May 16, 2005 for the meeting of May 25, 2005 - excluding Exhibit D, which is now incorporated as Attachment 9 of this report.
6. Desk item report to the Planning Commission dated May 25, 2005 for the meeting of May 25, 2005.
7. Email from Michael Rowe, received June 6, 2005.
8. Letter from Larry Arzie (four pages) received July 25, 2005.
9. Development Plans (Exhibit D) from Attachment 5 of staff report dated May 16, 2005.

Distribution:

Nicholas A. Difu, 19720 Oakmont Drive, Los Gatos, CA 95033

Michael T. Cobler, 900 E. Campbell Avenue, Campbell, CA 95008

BNL:SLB:mdc

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REQUIRED FINDINGS FOR

42 and 44 Elm Street

Conditional Use Permit U-05-013

Requesting approval to expand an existing restaurant, add additional seats and for an alternating use of parking on property zoned C-2. APN: 529-03-035

PROPERTY OWNER: Michael T. Cobler

APPLICANT: Nicholas A. Difu

- It has been determined that this project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.
- 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;
 - (2) The proposed use will not impair the integrity and character of the zone;
 - (3) The proposed use would not be detrimental to public health, safety or general welfare; and
 - (4) The proposed use of the property is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.
- As required by Section 29.10.150(e) of the Town Code for alternating use of parking that the alternating use of such spaces will not result in fewer parking spaces than required for the use.
- 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.

RECOMMENDED CONDITIONS OF APPROVAL FOR:

42 and 44 Elm Street

Conditional Use Permit U-05-013

Requesting approval to expand an existing restaurant, add additional seats and for an alternating use of parking on property zoned C-2. APN: 529-03-035

PROPERTY OWNER: Michael T. Cobler

APPLICANT: Nicholas A. Difu

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 and in substantial compliance with the plans approved and noted as Exhibit D in the report to the Planning Commission. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development, Development Review Committee or the Planning Commission, depending on the scope of the change(s).
2. **EXPIRATION:** Zoning approval will expire two years from the approval date pursuant to Section 29.20.320 of the Town Code, unless the approval has been vested.
3. **COMPLIANCE MEMORANDUM:** A memorandum shall be prepared and submitted with the building permit, detailing how the Conditions of Approval will be addressed.
4. **NUMBER OF SEATS.** The number of seats shall not exceed ~~12 total, including both indoor and outdoor seating~~ **50 (38 inside and 12 outside).**
~~HOURS OF ALCOHOLIC BEVERAGE SERVICE. The maximum hours of alcoholic beverage service shall be from 11am till 11pm seven days a week.~~
5. **HOURS OF OPERATION.** The maximum hours of operation shall be from ~~6:00am to 1:00am seven days a week~~ **11:30 AM to 9:30 PM seven days a week.**
6. **RESTAURANT USE.** A quality restaurant is permitted.
7. **ALCOHOLIC BEVERAGES.** Beer and wine are permitted to be served with meals. No alcoholic beverages shall be served without meal service. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. **Meals shall be served at the bar counter area.**
8. **ENTERTAINMENT.** There shall be no entertainment.
9. **HOLD HARMLESS.** A hold harmless agreement shall be recorded ~~maintained~~ releasing the Town from any liability relating to the outdoor seating.
10. **TAKE OUT.** Take out food shall be served in recycled material containers.
11. **UTENSILS.** All beverages and food served on site shall be served on reusable materials.
12. **TRASH.** Operators of the restaurant shall pick up trash in the vicinity of the restaurant when outdoor seating is available.
13. **LAPSE FOR DISCONTINUANCE.** If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
14. **TRANSFER OF PARKING CREDITS.** Prior to filing a building permit for the tenant

improvements, the applicant/property owner shall submit the required written agreements regarding the transfer of the parking credits. These documents shall be reviewed and approved by the Town.

15. **MECHANICAL EQUIPMENT.** All mechanical equipment shall be screened and the screening shall match the building in terms of material and color. Screening details shall be provided on the building permit plans. Noise levels from the equipment shall not exceed what is permitted by Section 16.20.025 of the Town Code.
16. **LOADING AREA.** Staff shall evaluate the need for the existing loading area adjacent to the outside dining area. If it is determined that the loading area should be eliminated, the developer shall submit a plan to the Town for approval, to landscape this area. The landscaping must be installed prior to final occupancy.

(Building Division)

17. **PERMITS REQUIRED:** A building permit shall be required for the tenant improvement for the future restaurant. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
18. **CONDITIONS OF APPROVAL:** The Conditions of Approval must be blue-lined in full on the **cover sheet** of the construction plans.
19. **SIZE OF PLANS:** Four sets of construction plans, maximum size 24" x 36."
20. **TITLE 24 - COMMERCIAL:** For any proposed tenant improvements, on-site general path of travel shall comply with the latest California Title 24 Accessibility Standards. Work shall include, but not be limited to, accessibility to building entrances from parking facilities and sidewalks.
21. **TITLE 24 - RESTAURANT USE:** Proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:
 - a. West Valley Sanitation District: (408) 378-2407
 - b. County Health Department: (408) 885-4200
 - c. Town Public Works Department: (408) 399-7530
22. **SPECIAL INSPECTIONS:** When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov.
23. **NONPOINT SOURCE POLLUTION STANDARDS:** The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print.
24. **PLANS:** The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538)
25. **APPROVALS REQUIRED:** The project requires the following agencies approval before issuing a building permit:
 - a. Community Development: Judie Gilli at 399-5702

- b. Engineering Department: Fletcher Parsons at 395-3460
- c. Public Works Department: (408) 399-5777
- d. Santa Clara County Fire Department: (408) 378-4010
- e. West Valley Sanitation District: (408) 378-2407
- f. Department of Environmental Health: (408) 918-3400

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:
(Engineering Division)

- 26. **TRAFFIC IMPACT MITIGATION FEE.** The developer shall pay a proportional to the project's share of transportation improvement needed to serve cumulative development within the Town of Los Gatos. The fee amount will be based upon the Town Council resolution in effect at the time the building permit applications is made. The fee shall be paid before the building permit is issued. The traffic impact mitigation fee for this project, using the current fee schedule and the preliminary plans is \$2,784.00. The final fee shall be calculated from the final plans using the rate schedule in effect at the time of the building permit application, using a trip generation rate based on Quality Restaurant use.
- 27. **GENERAL.** All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
- 28. **ENCROACHMENT PERMIT.** All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
- 29. **CONSTRUCTION STREET PARKING.** No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
- 30. **SILT AND MUD IN PUBLIC RIGHT-OF-WAY.** It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
- 31. **RESTORATION OF PUBLIC IMPROVEMENTS.** The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall

comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.

32. **SANITARY SEWER LATERAL.** Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.
33. **SANITARY SEWER BACKWATER VALVE.** Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.
34. **OUTDOOR TRASH ENCLOSURES.** Prior to building permit final, outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided within the enclosure. Temporary trash enclosures are exempt from this condition.
35. **GREASE TRAPS.** Meet all requirement of the Santa Clara County Health Department and West Valley Sanitation District for the interception, separation or pretreatment of effluent.
36. **CONSTRUCTION NOISE.** Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

37. ~~ALCOHOLIC BEVERAGES: Beer and wine may be served only with meals at the restaurant. No beer or wine may leave the premises. A meal is be defined as a combination of food items selected from a menu which would constitute a normally accepted meal (breakfast, lunch, dinner, or brunch).~~
38. **GENERAL.** The restaurant/bar is subject to the following:
 - a. Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
 - b. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.

- c. All establishments shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
 - d. All licensed operators shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
 - e. Taxicab telephone numbers shall be posted in a visible location.
39. ~~ALCOHOLIC BEVERAGE SERVICE~~ **OUTDOOR DINING:** Beer and wine may be served with meals in the outside patio area as long as there is a barrier or fencing, 3 feet in height surrounding the patio area and separating it from the sidewalk. The barrier or fencing may be a combination of fencing and shrubbery to equal 3 feet. A hostess shall be stationed at the patio entrance at all times.

RESOLUTION 2001 - 106

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
AMENDING THE TOWN'S ALCOHOLIC BEVERAGE POLICY**

WHEREAS, the sale of alcoholic beverages, if not regulated, can jeopardize public safety, result in an increase of calls for police services and compromise the quality of life for Town residents; and

WHEREAS, The Town Council wants to balance the regulation of alcoholic beverage service and protection of residential neighborhoods with the goal of maintaining a vibrant and successful Downtown and commercial areas throughout Los Gatos; and

WHEREAS, the Town Council held a study session on July 2, 2001 to discuss issues relating to service of alcoholic beverages; and

WHEREAS, the Town Council has indicated a desire to review all applications for new alcohol service or change in existing service, and a need to amend the existing Alcohol Policy,

THEREFORE BE IT RESOLVED: the Town Council of the TOWN OF LOS GATOS does hereby adopt the amended Alcoholic Beverage Policy attached hereto as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 17th day of September, 2001, by the following vote:

COUNCIL MEMBERS:

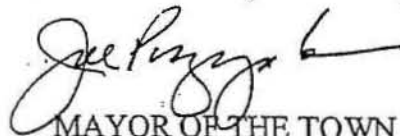
AYES: Randy Attaway, Steven Blanton, Sandy Decker, Steve Glickman,
Mayor Joe Pirzynski.

NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

POLICY REGULATING THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES

I. Purpose

The consumption or service of alcoholic beverages, if not regulated, can jeopardize public safety, result in an increase of calls for police services and compromise the quality of life for Town residents. This policy provides parameters for alcoholic beverage service, particularly addressing late night service when alcohol related incidents are most likely to occur and when the disturbances to Town residents is least tolerable.

The service of alcoholic beverages, with or without meals, past 10 PM is a discretionary privilege to be determined on a case by case basis. The following provisions are intended to balance the protection of residential neighborhoods in close proximity to commercial districts and still maintain the viability of our commercial centers in which restaurants have an essential role. Hours of operation may be regulated based on an establishment's proximity to residential neighborhoods or schools, the concentration of establishments in an area serving alcoholic beverages or for other reasons that may arise at the public hearing.

The deciding body may approve a conditional use permit to serve alcoholic beverages based on the merits of the application and subject to the following requirements:

II. General policy

1. The Town shall continue to **strongly** discourage new applications for stand alone bars or restaurants with separate bars.
2. The Town shall continue to discourage applications for entertainment establishments serving alcoholic beverages.
3. Entertainment in association with an eating or drinking establishment may be allowed if standards and a permit process are adopted.
4. Alcoholic beverage service for new conditional use permit applications or applications for modification of a conditional use permit shall not be allowed:
 - A. After 11 PM Sunday through Thursday, except for holidays and evenings before holidays.
 - B. After 1 AM Friday, Saturday, holidays or evenings before holidays.

An existing establishment with a conditional use permit in good standing allowed to serve alcoholic beverages past the hours stated above may continue to operate under their existing hours of operation.

5. Any establishment serving alcoholic beverages shall be subject to the following:
 - A. Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
 - B. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
 - C. All establishments shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the Californian restaurant Association.
 - D. All licensed operators shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
 - E. Taxicab telephone numbers shall be posted in a visible location.
6. The deciding body shall make the following findings prior to approving an application for conditional use permit to serve alcoholic beverages past 10PM:
 - A. Late night service will not adversely impact adjacent residential neighborhoods.
 - B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.
 - C. The applicant has demonstrated a clear benefit to the community.
7. A meal is defined as a combination of food items selected from a menu (breakfast, lunch or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.
8. Alcoholic beverage service in approved outdoor seating areas may be permitted if adequate separation from public areas is provided as determined by the Town Manager. The separation shall clearly suggest that alcohol is not allowed outside the restaurant seating area.

III. Specific Policy

1. Restaurants:

Alcoholic beverages may only be served with meals.

2. Restaurants With Separate Bars:

Alcoholic beverage service is permitted in the dining area only in conjunction with meal service. Meal service shall be available until closing or 11 PM Sunday through Thursday and until 12 midnight Friday, Saturday, holidays and evenings before holidays, whichever is earlier, if late night bar service is available. Specific hours of operation for each establishment are determined upon issuance of a conditional use permit.

IV. Review Process

1. Proposals for new bars or restaurants with bars and all requests for new alcohol service or a change to existing service shall be reviewed by the Planning Commission. The Commission will make a recommendation to the Town Council and the Council shall have final review authority.
2. Changes in ownership for businesses involving service of alcoholic beverages shall be reviewed by the Community Development Department. The following process will be followed:
 - a. The Director of Community Development shall contact the new business owner to make them aware of the conditions of approval attached to the Use Permit for the location.
 - b. One year following issuance of a business license, surrounding/impacted property owners shall be notified and any comments regarding the operation of the business shall be solicited.
 - c. If the Director of Community Development becomes aware of any alcohol related impacts on the surrounding neighborhood, the Director shall review the operation of the business to determine whether there is a violation of the use permit.

- d. If there are violations of the use permit that have not been voluntarily corrected by the business owner the matter will be forwarded to the Planning Commission for public hearing pursuant to Section 29.20.310 of the Zoning Ordinance.
- e. Pursuant to Section 29.20.315 of the Zoning Ordinance the Planning Commission may revoke or modify the conditional use permit if it finds that sufficient grounds exist.

IV. Enforcement

All conditional use permits issued to establishments for alcoholic beverage service on-site shall be subject to Section 29.20.318(b) of the Town Code authorizing the Town Manager to take enforcement action if it is determined that the sale of alcohol has become a nuisance to the Town's public health, safety or welfare. Enforcement of section 29.20.318(b) of the Town Code will be based on, but not limited to, the following factors:

- I. The number and types of calls for service at or near the establishment that are a direct result of patrons actions;
- II. The number of complaints received from residents and other citizens concerning the operation of an establishment;
- III. The number of arrests for alcohol, drug, disturbing the peace, fighting and public nuisance violations associated with an establishment;
- IV. The number and kinds of complaints received from the State Alcoholic Beverage Control office and the County Health Department;
- V. Violation of conditions of approval related to alcoholic beverage service.

The Alcoholic Beverage Policy is not to be construed to be a right of development. The Town retains the right of review and approval (or denial) of each project based on its merits.

A P P E A R A N C E S:

Los Gatos Planning
Commissioners:

Phil Micciche, Chair
Michael Burke
Michael Kane
Tom O'Donnell
Lee Quintana
Joanne Talesfore
Morris Trevithick

Assistant Director of
Community Development:

Randy Tsuda

Town Attorney:

Orry Korb

Transcribed by:

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LOS GATOS PLANNING COMMISSION 05/25/2005
Item #2, 42/44 Elm Street

P R O C E E D I N G S:

CHAIR MICCICHE: Okay, Item #2. Forty-two and 44
Elm Street, Conditional Use Permit U-05-013, requesting
approval to expand an existing restaurant, Café Rouge, add
additional seats, and for an alternating use of parking on
property zoned Z-2 APN529-03-035. Is the applicant here?

NICHOLAS DIFU: Good evening, ladies and
gentlemen. The letter that I wrote you that's in the
application is pretty much self-explanatory. I just want to
reiterate the fact that I have been working in this town for
twelve years now. I started as a dishwasher over at the
Great Bear and worked at I Gatti. I've also worked at the
Brewing Company. I moved away for a little while to go
study, and I went back and worked at Café Marcella and moved
on to the Wine Cellar, and now I'm opening up a new
restaurant in town for Sue Farwell and Mark Achilli at the
180.

The restaurant that I'm planning on designing, or
is going to be put in, is a fine dining restaurant.

Just to let you know, I did receive a four star
rating from the San Jose Mercury at Café Marcella. I
received also a three-and-a-half star rating at the Wine
Cellar. I was only there at the time for three-and-a-half
months. It's all about the food, and it's all about the fine
dining at the restaurant in Los Gatos, and that's pretty

LOS GATOS PLANNING COMMISSION 05/25/2005
Item #2, 42/44 Elm Street

1 much it. If there are any questions I'd be willing to answer
2 them.

3 CHAIR MICCICHE: Let me just interrupt for a
4 moment and remind the commissioners that there is a desk
5 item on this. I advised you at the beginning and you want to
6 make sure you look at that before we go on. While you're
7 doing that I'll open it to any questions they may have.
8 Commissioner Burke.

9 COMMISSIONER BURKE: Now you're planning on
10 serving lunch I think your letter said, correct?

11 NICHOLAS DIFU: Yes, I am.

12 COMMISSIONER BURKE: It seems to me that putting
13 an 11:30am start time on your condition when you serve lunch
14 is cutting it kind of close, is it not?

15 NICHOLAS DIFU: The condition is on being open for
16 service at 11:30. We will open the doors up probably around
17 9:00 o'clock in the morning to get things ready as far as
18 prep, but no customers will be served until 11:30.

19 COMMISSIONER BURKE: So no plans for Sunday brunch
20 or nothing like that?

21 NICHOLAS DIFU: Brunch? No. Believe me, I don't
22 like cooking breakfast, so that's not going to happen.

23 COMMISSIONER BURKE: One of my concerns, and I
24 think it's one of the concerns of other people as Los Gatos
25 has more restaurants in space, is the possibility of dark
windows during the middle of the day. Would you accept a

1 condition that if you're going to serve dinner you're also
2 going to serve lunch, just so we don't have a large section
3 of that frontage dark during the day?

4 NICHOLAS DIFU: I don't understand your question.
5 I'm serving lunch and dinner.

6 COMMISSIONER BURKE: But nothing in this condition
7 requires you to serve lunch. Would you be willing to accept
8 a condition that is you serve dinner on a given day you also
9 serve lunch, just so we don't have evening only restaurants
10 in the downtown dais during the day?

11 NICHOLAS DIFU: Yes, I will definitely accept
12 that.

13 COMMISSIONER BURKE: Thank you.

14 CHAIR MICCICHE: Any other questions at this
15 point? Thank you. We're going to call the public up and then
16 we'll call you back.

17 NICHOLAS DIFU: Thank you very much for your time.

18 CHAIR MICCICHE: The first card I have is from Mr.
19 Kurt Lemons. Is he here?

20 KURT LEMONS: My name is Kurt Lemons. I own a
21 shop, Upstream Fly Fishing, at 54 North Santa Cruz Avenue in
22 the downtown.

23 It's sort of my understanding that the
24 requirements for a conditional use permit requires public
25 benefit and they also have to address intensification.
Presently there's a coffee shop at this address. The

1 proposed expansion, my understanding, is that they're going
2 to knock down the wall between the existing coffee shop and
3 what is now a children's salon.

4 I think that we have more pot luck benefit from
5 the children's salon, which none exist in the town at the
6 present, where you have special attention to children and
7 their haircuts and their well being, that sort of thing. The
8 coffee shop that is there has been there now for quite some
9 number of years and does provide public benefit.

10 Increasing the size of that location to a larger
11 restaurant is going to increase intensification, which can I
12 think at some future date cause some problems in that
13 parking lot.

14 Additionally, I think we have an awful lot of
15 restaurants that are really having troubles at this point in
16 time. I don't believe that we need an additional restaurant
17 that we don't even have at that location at this point in
18 time. I think that we need a lot more time—at least a few
19 more years—in the downtown area for the existing
20 restaurants that have undergone tremendous turnover over the
21 past few years to stabilize, and then decide at some time in
22 the future that we see the need for an additional restaurant
23 and maybe see the public benefit. I think that's all I have
24 to say tonight.
25

1 CHAIR MICCICHE: Let me see, are there any
2 questions. Thank you. The next card I have is from Suzanne
3 O'Gorman.

4 SUZANNE O'GORMAN: Hello. Actually Sandy is my
5 real nickname.

6 I'm a longtime Los Gatos resident. I've never been
7 to the Town Council, never felt compelled to until this
8 time. I've been here almost twenty-five years, raised my
9 kids here.

10 I'm here because for me this is more of an issue
11 of integrity really than all of the intensification and
12 whatever all this is.

13 I read the Weekly like everybody does, and I
14 thought Café Rouge, great, that's Belgis and Farhad, they're
15 going to expand their service. Their food is fabulous; their
16 service is extraordinary. Me and several girlfriends and
17 colleagues—I work in software—we bring small groups of
18 business people from out of town, a lot of Europeans and
19 Asians and whatnot, for lunch there because it's a very
20 comfortable and casual and warm environment and the food is
21 excellent.

22 So we're just sort of freaked out that all of a
23 sudden someone sort of slid in and is using their name. I
24 would never have noticed; I would have assumed it was them
25 and would never have come. So it's a couple of reasons.

1 One, just integrity in our system and kind of the
2 governance of our process here, because it really was kind
3 of a slimy deal just from my point of view in terms of how
4 it even got on the roster here.

5 I think also there's a lot of commercial pressure
6 to move. I've seen so many small business proprietors move
7 out, and it's really what the charm of Los Gatos has been
8 forever, right? So yet another sort of a larger white
9 tablecloth Forbes Mill, Chart House, Steamer's, larger
10 environment, I think to Kurt's point, we just don't need it.
11 I mean I hear they're suffering and I don't know why it
12 makes any sense at all.

13 So I don't know how many seats they're suggesting,
14 I don't know the volume of cars. We have a never-ending
15 parking problem. I'll bet you I've supported the town just
16 paying parking tickets for my two teenagers for at least ten
17 years. I'm sure I'm at the top of your list of revenue
18 producers, so I mean there is a parking issue for sure.

19 What else am I wondering about or worried about?
20 It just doesn't make any sense to me. We don't need it. It
21 seemed kind of slimy, and that's why I'm here. Otherwise
22 I'll probably never see you all again. Everything else works
23 great in the town for me; I love it. My kid's graduated from
24 high school, yes, whoo-who, they're on to college. I just
25 felt like I needed to come and say my piece and that's it.

1 CHAIR MICCICHE: Thank you. Any questions?

2 Commissioner Kane.

3 COMMISSIONER KANE: What do you mean, "slimy
4 deal?"

5 SUZANNE O'GORMAN: When I read the Weekly it says
6 that Café Rouge was expanding. So to me that means the
7 current proprietors are expanding Café Rouge, right? I know
8 that Farhad and Belgis had an idea to. You know, Oakville
9 went out and we really missed having a place you could go
10 and get kind of appetizer stuff and fresh foods that you
11 wouldn't want to prepare yourself. So I just assumed that's
12 what was happening, that they were expanding to their sort
13 of vision to provide kind of a quasi-Oakville local shop.

14 COMMISSIONER KANE: And?

15 SUZANNE O'GORMAN: That's not what it is at all.
16 It's a restaurant and lunch and dinner, no more coffee and
17 all the switches. I go every Saturday and Sunday for coffee
18 after we run, so it's a complete change. It's a
19 misrepresentation in my mind to what it really is.

20 CHAIR MICCICHE: Excuse me. Did you have a chance
21 to read the Staff Report that they have on list?

22 SUZANNE O'GORMAN: Staff?

23 CHAIR MICCICHE: They have a Staff Report on this
24 thing, and it states, "The applicant is not a proposed
25 tenant, not the current owner of the Café Rouse
Restaurant."

1 SUZANNE O'GORMAN: I just read the newspaper.

2 CHAIR MICCICHE: I know. We don't write the paper
3 though. I think that's what he's trying to clear up. It's
4 been stated clearly to us that it's not the existing
5 restaurant.

6 SUZANNE O'GORMAN: Oh, okay.

7 COMMISSIONER KANE: I'm trying to clear up what
8 she means by "slimy deal." If there's something wrong or
9 inappropriate that you would offer, then say so.

10 SUZANNE O'GORMAN: Just the misrepresentation of
11 what it is. And again, I just read the newspaper.

12 CHAIR MICCICHE: Yeah, she only knows what she
13 read in the newspaper.

14 SUZANNE O'GORMAN: Yeah.

15 CHAIR MICCICHE: I don't think it's an issue here.
16 Let's move on. Commissioner Quintana.

17 COMMISSIONER QUINTANA: Yeah, I do have a comment
18 on this. Let me state it this way: when I read the notice in
19 the newspaper on the hearings that were going to come before
20 the Planning Commission before I got my staff report, I made
21 the same assumption that you did. I don't think it was
22 particularly slimy, but it wasn't the complete information.
23 That was the way the application was written.

24 CHAIR MICCICHE: That's fine. Thank you. Do I have
25 any more cards? Are there any more speakers on this item?
Did you fill out a card, sir?

1 FARHAD PROUSHANI: I did.

2 CHAIR MICCICHE: Why don't I have it then? Oh,
3 here it is. I'm sorry. Farhad?

4 FARHAD PROUSHANI: Good evening, my name is Farhad
5 Proushani and this statement I'm going to make is more
6 informative than anything else.

7 Me and my wife, we are the owners of the Café
8 Rouge. We never put any application at this time for any
9 expansion. Not only the paper it says, but also on the
10 leaflets that were sent to the neighborhood, it said Café
11 Rouge is expanding. I'm just following what she was
12 referring to, that it was misleading as far as we are
concerned.

13 We are the owners of the Café Rouge; I say it once
14 again. We are the legal leaseholders for the next three
15 years at the same location, and it's ironic that I can see
16 an application is being put to turn the place into a
17 restaurant when the owner is alive and is working. This is
18 really ridiculous. I mean this application, this meeting
19 regarding that application is completely out of bounds. We
20 are still working, we are still planning, and we intend to
21 stay there for the next three years. Thank you very much.

22 CHAIR MICCICHE: Do we have a question? What is
23 it?

1 COMMISSIONER BURKE: Do you have a registered
2 fictitious business name for Café Rouge in Santa Clara, or
3 do you own the DBA?
4 FARHAD PROUSHANI: Yes, sir. We have it for the
5 next four months. We need to register it after four months.
6 COMMISSIONER BURKE: So you still have it?
7 FARHAD PROUSHANI: At this point of time, we are
8 the owner of that name.
9 COMMISSIONER BURKE: You're the owner of that name
10 and you say you have a valid lease for that location for the
11 next three years?
12 FARHAD PROUSHANI: For the next three years, yes.
13 COMMISSIONER BURKE: Thank you.
14 CHAIR MICCICHE: Yes, Commissioner O'Donnell.
15 COMMISSIONER O'DONNELL: Orry Korb is gone I
16 guess.
17 CHAIR MICCICHE: Yes, at this point he is.
18 COMMISSIONER O'DONNELL: When I read the report,
19 apparently there's some dispute going between the owners of
20 the property and the tenant of the property.
21 CHAIR MICCICHE: Correct.
22 CHAIR MICCICHE: I assume the owner is not here
23 tonight?
24 FARHAD PROUSHANI: No, sir.
25 COMMISSIONER O'DONNELL: We're in a position where
we have something, as I understand it, signed by the owner

1 of the property and the applicant, and there seems to be a
2 dispute between you and the owner.
3 FARHAD PROUSHANI: I understand.
4 COMMISSIONER O'DONNELL: And so we're in a no
5 man's land.
6 CHAIR MICCICHE: No, we're not. That's their
7 issue; it's not ours.
8 FARHAD PROUSHANI: I understand.
9 COMMISSIONER O'DONNELL: Here's Mr. Korb. Orry,
10 while you were out this question came up.
11 The tenant reasonably says that he is the tenant
12 and is doing what he ought to do and he's going to do it the
13 next three years. The report we read says there seems to be
14 some dispute between the fee owner and the tenant. We have
15 an application I assume before us signed by the owner and
16 the applicant, and this gentleman is saying this is crazy
17 because he's there. What does that mean for us?
18 ORRY KORB: Again, it's another of those private
19 disputes that are often raised in the context of land use
20 applications.
21 Any approval is ultimately subject to the right of
22 the owner to get access to the property. Merely approving
23 the application, should the Commission choose to do that,
24 does not automatically mean that the lease is terminated; it
25 doesn't affect the rights of the parties one way or another.

1 We are not judges of those questions. We don't
2 have the facts, and even if we had the facts on both sides,
3 we are not empowered to decide who has the property right
4 and the property. All the Commission can do is act within
5 its authority on the land use issues and decide, and should
6 you grant the application that would ultimately mean that
7 the applicant and the owner of the property would still have
8 to deal with the tenant. Again, it's always going to be
9 subject to whatever rights the tenant has.

10 CHAIR MICCICHE: Thank you. Well then, let's put
11 it in context. The Staff Report very clearly said it was not
12 part of this issue, so it's a land use issue. It isn't our
13 issue with this. So if we're going to do it for academic
14 reasons, that's fine, we can do it afterwards, unless it's
15 relevant to the land use issue.

16 ORRY KORB: It's relative to the notification and
17 the application.

18 COMMISSIONER BURKE: Was the application filed in
19 the name of Café Rouge, and if it was, did whoever filed it
20 under the name of Café Rouge have a right to do that if they
21 did not own the fictitious name, and therefore was it a
22 valid application, was it a valid notification, was my
23 question.

24 RANDY TSUDA: The application was not filed under
25 the name Café Rouge. The Staff has been requested in
situations where you are modifying a tenant's space or

1 modifying an existing use (inaudible) utilize the name of
2 the current business in the interest of communicating to the
3 public where this business is.

4 CHAIR MICCICHE: Good. Do you have a question?

5 MALE: May I?

6 CHAIR MICCICHE: Not at this point. Let them ask.
7 Do you have a question, Commission Kane?

8 COMMISSIONER KANE: Just a yes or no from Town
9 Council. Would it be too involved, would there be any merit
10 to continue this question until that question was resolved?

11 CHAIR MICCICHE: No, not at all.

12 ORRY KORB: You mean to continue the question of
13 the landlord/tenant dispute?

14 COMMISSIONER KANE: Until that dispute is
15 resolved?

16 ORRY KORB: It probably would not be a very good
17 idea to do that. I mean basically what you're saying is
18 you're prejudging the issue.

19 COMMISSIONER KANE: I'm also saying it adds an
20 incentive to the issue.

21 ORRY KORB: Well again, any action that you take,
22 assuming--and I'm not suggesting--but assuming that there
23 was an approval, it would be subject to--and you can state
24 it expressly if you wish to do so--to the outcome of the
25 landlord/tenant dispute. If the landlord were to lose his

1 claim of primacy over the property, he can't do anything
2 with the permit.

3 COMMISSIONER KANE: Thank you. Thank you, Mr.
4 Chairman.

5 CHAIR MICCICHE: Thank you. Are there any other
6 speakers on this? Seeing none, then I'm going to close the
7 public hearing. I'm sorry; I'm going to bring the applicant
8 back up, if there's any rebuttal to what's been stated here.

9 NICHOLAS DIFU: There is no rebuttal. If there's
10 any other questions.

11 I do have one comment though about the children
12 that was made. I have four nieces, I have a lot of family
13 and friends, and one of the reasons was to do a fine dining
14 restaurant where also people can bring in their kids and be
15 able to teach them how to eat in a fine dining restaurant,
16 and that's part of what this town doesn't have as well, but
17 it's going to be okay.

18 Being able to see a chef cook because of the
19 exposition kitchen where the chefs will be in front of you
20 cooking, Los Gatos does not have that completely, and we'll
21 be doing that in front of you guys, so we can be showing you
22 guys what we're doing.

23 That's basically it. If there's any other
24 questions.

25 CHAIR MICCICHE: Yes, Commissioner Burke.

LOS GATOS PLANNING COMMISSION 05/25/2005
Item #2, 42/44 Elm Street

1 COMMISSIONER BURKE: Question regarding parking
2 and the parking credits. Have you or the landlord already
3 reached an agreement with the owner of the parking credits
4 from Almendra, or is that still speculative?

5 NICHOLAS DIFU: Yes, no.

6 COMMISSIONER BURKE: You have reached an agreement
7 on that?

8 NICHOLAS DIFU: Yes.

9 COMMISSIONER BURKE: Thank you.

10 CHAIR MICCICHE: Any other questions. Commissioner
11 Talesfore.

12 COMMISSIONER TALESFORE: I have a question about
13 he ventilation system. Will this exposition kitchen you're
14 speaking about, will this require new ventilation apparatus?

15 NICHOLAS DIFU: Yes, we will be putting a new hood
16 in.

17 COMMISSIONER TALESFORE: I mean on the roof.

18 NICHOLAS DIFU: Yes, it's going to be on the roof,
19 and it's going to be far enough back where it won't be seen
20 from the street. It will be in the back of the building.

21 CHAIR MICCICHE: Okay?

22 NICHOLAS DIFU: Thank you.

23 CHAIR MICCICHE: Thank you. With that I'm going to
24 close the public hearing and open it up to either comments,
25 a motion, or questions of Staff. I'm going to make one
comment first.

LOS GATOS PLANNING COMMISSION 05/25/2005
Item #2, 42/44 Elm Street

1 When I looked this over I saw this as the issue
2 being whether we're going to give up a personal service
3 area, which is essentially a retail area, and convert it to
4 a restaurant. That to me was the issue here, and that to me
5 is still the issue.

6 At the present time we have a high turnover
7 restaurant there with no kitchen and we're going to convert
8 it to a high quality restaurant with a kitchen. Keep in mind
9 that if this is done, that condition use permit then will go
10 with the land, so that even if this restaurant doesn't make
11 it, it can become a restaurant again after that.

12 So that's our issue. Are we willing to give up a
13 potential retail space, which is now a personal service
14 business, versus making the whole thing a restaurant at this
15 point. That's the way I look at this thing when I looked it
16 over, and I just wanted to make that comment.

17 Yes, do you have a comment or a question?

18 COMMISSIONER TALESFORE: No, a motion to make.

19 CHAIR MICCICHE: You have a motion? By all means,
20 make it.

21 COMMISSIONER TALESFORE: I propose--for discussion
22 I hope--but I propose to deny Conditional Use Permit U-05-
23 013 requesting approval to expand the existing restaurant,
24 add additional seats, for an alternating use of parking on
25 property zoned Z-2.

1 The reason is that when I looked at our General
2 Plan and the conformance that this would have to reach, I
3 could not find that this would adequately meet what I think
4 is very important here, and that is, "consistent with the
5 small scale, small town atmosphere and image," and also
6 that it definitely would displace the retail uses that are
7 vital to us. That is a wonderful little retail area that
8 developing there. Café Rouge is of the kind of--in my
9 opinion and according to the General Plan language--the kind
10 of small scale that we're looking for.

11 CHAIR MICCICHE: Consistent with the General
12 Plan.

13 COMMISSIONER TALESFORE: Yes.

14 CHAIR MICCICHE: Do we have a second? I have a
15 second. Any comments on the motion? Do you want to add
16 something to the motion?

17 COMMISSIONER QUINTANA: Yes, I'd like to
18 emphasize and then add a little bit to what Commissioner
19 Talesfore said.

20 I also could not find that this particular
21 proposal meets most if not all the General Plan policy
22 conformance that is listed in the Staff Report, because
23
24
25

1 one, while the Town had regulations regarding personal
2 service businesses, we don't want them to have too many.

3 On the other hand, there is also regulations
4 regarding increased restaurants, and as Commissioner
5 Talesfore said, if we allow this to go through, we have
6 displaced a personal service business which might be
7 considered a plus, but we've also intensified a restaurant
8 which would be considered in my mind a negative because it
9 would eliminate the possibility in the near-term future any
10 type of real retail use in those two spaces.

11 In addition, and I think it was mentioned by
12 somebody who spoke referring not exactly in those terms,
13 but that the Café Rouge is a small town character.

14 Also with respect to the alternate parking, while
15 in theory it meets the requirements, my feeling was that
16 using credits for a location that is located five or six
17 blocks away in reality doesn't provide the parking spaces
18 near the actual use.

19 CHAIR MICCICHE: Thank you. Any other comments?
20
21 Mike

22 COMMISSIONER BURKE: I was originally when I
23 started looking at this thinking that giving up a personal
24

1 service business for an expanded restaurant was probably a
2 good idea. Then I started looking at the parking issues.

3 I don't want to get into small town losing one
4 restaurant for another, but I am concerned about the
5 parking issues and taking the parking credits--and I'm
6 making these statements now because I assume this is going
7 to go to the Council and I want them to know the way I
8 feel--is those fifteen spots that are not being used on
9 Almendra are a critical resource for this town and I would
10 hate to see them used on something that we have a lot of,
11 i.e. a restaurant, no matter how good it is, when there are
12 so many other things we need in the town and those credits
13 could maybe be better used.

14 CHAIR MICCICHE: I'm going to call the question.
15 All those in favor? Against? Seven-zero. Do you want to give
16 the appeal rights?

17 COMMISSIONER BURKE: I'm abstaining.

18 CHAIR MICCICHE: Oh, that's right. You have to
19 recuse yourself. The vote is six-nothing. We just have
20 recalled that Commissioner Burke had to recuse himself from
21 this application. We have a six-nothing vote.

22 ORRY KORB: Two points. For the record, Mr. Burke
23 did, slightly late, but did recuse himself from further
24 participation in the application because he does, or at
25 least we think he has a property interest within 500 feet of

1 the location subject to the application. We didn't have a
2 change to measure that, so to be conservative, he's recused
3 himself.

4 There are appeal rights. Anyone dissatisfied with
5 the decision of the Commission may appeal the decision to
6 the Town Council. The appeal must be filed upstairs in the
7 Clerk's Office. It must be filed within ten days. There is a
8 fee for filing an appeal.
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Date: May 16, 2005
For Agenda Of: May 25, 2005
Agenda Item: 2

REPORT TO: The Planning Commission
FROM: The Development Review Committee
LOCATION: 42 and 44 Elm Street
Conditional Use Permit U-05-013

Requesting approval to expand an existing restaurant (Café Rouge), add additional seats and for an alternating use of parking on property zoned C-2. APN: 529-03-035
PROPERTY OWNER: Michael T. Cobler
APPLICANT: Nicholas A. Difu

DEEMED COMPLETE: April 21, 2005
FINAL DATE TO TAKE ACTION BY: October 21, 2005

- FINDINGS:
- As required by Section 29.20.190 of the Town Code for the granting of a Conditional Use Permit
 - As required by Section 29.10.150(e) of the Town Code for alternating use of parking
 - 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.
 - It has been determined that the project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

- EXHIBITS:
- A. Required Findings.
 - B. Recommended Conditions of Approval.
 - C. Letter of Justification (two pages) received April 15, 2005.
 - D. Development Plans (two sheets) received April 21, 2005.

A. REMARKS

1. Project Summary

The applicant is requesting approval to modify a conditional use permit to expand an existing restaurant into an adjacent personal service space, to increase the seating from 12 to 50 and to allow for an alternating use of parking. If approved, the restaurant will be 1,218 square feet in size. The primary issues that need to be evaluated by the Commission are the expansion of a restaurant into a personal service space and the alternating use of parking as discussed below.

The applicant is a proposed tenant, not the current owner of the Café Rouge restaurant. It has come to the Town's attention that there is a civil issue regarding the lease arrangement between the current owner of the restaurant and the property owner. This is not an issue that the Town is involved in and should be left to the property owner and the current restaurant operator to resolve.

2. Use

Expansion - The site currently contains a commercial building with three retail spaces, two personal service spaces (hair salons) and one restaurant with outside seating. The applicant is proposing to expand an existing 668 square foot restaurant into an existing 550 square foot hair salon for a total of 1,218 square feet. The expansion is not considered a new restaurant use, however, it is an expansion of an existing restaurant. In addition, the existing restaurant only has a minor kitchen prep area and the proposed use will have a full kitchen. The plans show that a bar counter is proposed. This counter will operate as a food service bar so that the customers will have an opportunity to observe the chef. The counter is not intended to operate as a separate bar area for the purpose of drinking alcoholic beverages. No exterior work is proposed.

The Town has adopted two ordinances that apply to this application. First, in 2004, the Town Council adopted an Ordinance to regulate the establishment of personal service businesses. Regulations were adopted since the increase in the number of personal service businesses was found to be a possible threat to the Town's unique retail environment by displacing retail businesses. Second, in 1996, the Town Council amended the Town Code to provide a more comprehensive review of additional restaurant use in the Downtown area. It was found that an over concentration of restaurants in the Downtown would displace retail uses that are vital to continued success of the Downtown retail environment. The intent of the amendment is to discourage the displacement of retail uses by new restaurant uses. Although the approval of this application would eliminate a personal service business, it would also reduce the possibility of a retail use occupying either of these tenant spaces in the future. It will also create a full restaurant operation given the existing restaurant only has a minor kitchen prep area and the proposed use will include a full kitchen.

Number of Seats/Hours of Operation - The applicant is also requesting approval to increase the number of seats from 12 to 50. The hours of operation will be reduced from 6:00 AM to 1:00 AM seven days a week to 11:30 AM to 9:30 PM seven days a week. The existing outside seating and the service of beer and wine will be maintained. No entertainment is associated with this use. The Police Department has considered this application and has no concerns.

Restaurant Classification - The existing restaurant is classified as high turnover sit down restaurant. The proposed restaurant, will operate as an upscale, fine dining restaurant or "quality" restaurant as defined by the Zoning Ordinance. Following are the definitions of a "quality" restaurant and a "high turnover" restaurant pursuant to Section 29.10.120 of the Town Code:

Restaurant, quality means a restaurant of high quality and with turnover rates usually of at least one (1) hour or longer, generally do not serve breakfast, may not serve lunch, but always serve dinner.

Restaurant, high turnover (sit-down) means a restaurant with turnover rates generally of less than one (1) hour, is usually moderately prices and frequently belong to a restaurant chain, generally serves breakfast, lunch and dinner, and are sometimes open twenty-four (24) hours a day.

3. Parking

The subject site has 15 parking spaces within the Parking Assessment District (PAD). There are no on site parking spaces. Following is a breakdown of the required parking.

	Parking Ratio	Existing Use sq ft/req parking		Proposed Use sq ft/req parking	
Retail	1/300 sq ft	2,423 sq ft	8.07	2,423 sq ft	8.07
Personal Service	1/300 sq ft	1,152 sq ft	3.84	602 sq ft	2.01
Restaurant	1 space/ 4 seats	668 sq ft	3.00	1,218 sq ft	13
TOTAL REQ PARKING		15 in PAD 0 on site		24 in PAD 0 on site	

The proposed application requires nine additional parking spaces adjusted to take into account the additional seating and loss of the personal service business. In order to meet the parking requirement, the applicant is requesting approval for an alternating use of parking for nine parking spaces credited to the property located at 227 Almendra Avenue. In 2002, Town Council approved a zone change of the Almendra site from Office to Single Family Residential. The Almendra site has a parking credit of 15 parking spaces in the Parking Assessment District. A house has been constructed at the Almendra site. Therefore, the parking spaces credited to the Almendra site are unused and available. A transfer of these parking credits is permitted by Section 29.10.150(e) of the Town Code through the Conditional Use Permit process. Approval of this request must be supported by findings that the alternating use of such spaces will not result in fewer parking spaces than required for the use. As stated earlier, none of the parking spaces are required for the Almendra property. In addition, written agreements will be required as a condition of approval to verify the parking arrangement.

The Town has approved numerous requests for an alternating use of parking. These approvals involved staggering work hours of the businesses to ensure that the parking was available when needed by each use. Contracts and lease agreements are required and there is always the possibility that the spaces will become unavailable in the future. Consequently, lease agreements must be provided annually to ensure parking is available. This proposal is unique in that the available parking credits have no encumbrances. The person who has rights to the available spaces will sell them to the property owner. This is the cleanest approach for approving an alternating use of parking since the parking credits will be transferred to the subject property.

4. Traffic

The restaurant will change from a high turnover restaurant to a quality dining restaurant, which generates fewer trips. However, due to the change of use from personal service to restaurant, there will be a net increase of 47 ADT and four PM peak hour trips. The traffic impact is considered minor according to the Town's Traffic Impact Policy and a traffic study and community benefit are not required. Traffic impact mitigation fees, however, are required as a condition of approval.

5. General Plan Conformance

The General Plan designation for the parcel is Central Business District Zone, which allows for community oriented goods and services, while maintaining a small town character. The following sections of the General Plan are relevant to the proposed application:

L.P.1.3 - Encourage economic and social activity consistent with a small-scale, small town atmosphere and image.

L.P.5.1 - Maintain a variety of commercial uses (a strong downtown commercial area combined with Los Gatos Blvd and strong neighborhood commercial centers) to meet the shopping needs of residents and to preserve the small-town atmosphere.

L.P.5.2 - Encourage a mix of retail, office and professional uses in commercial areas, except in the Central Business District where retail should be emphasized.

L.P.5.5 - Encourage the development and retention of locally-owned stores and shops.

L.G.6.2 - 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 viability.

T.P.6.4 - Require adequate parking in commercial areas so as not to impact or affect adjacent residential properties

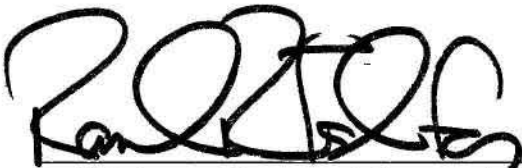
C. RECOMMENDATION:

Pursuant to the Town's Alcohol Policy, this matter must be referred to Town Council if the recommendation is for approval. The Development Review Committee considered this matter on April 19, 2005. As discussed above, in considering this application, it must be determined whether or not the restaurant expansion is in the best interest of the community and consistent with the aforementioned General Plan policies. If the Planning Commission finds merit with the proposal, it should:

1. Make the required findings (Exhibit A),
2. Recommend approval of the application to Council, subject to conditions (Exhibit B - New wording is shown in bold and deleted words are struck out).

If the Commission has concerns with the application, it can:

1. Continue the matter to a date certain with specific directions,
2. Recommend approval of the application to Council with additional and/or modified conditions of approval, or
3. Deny the application.



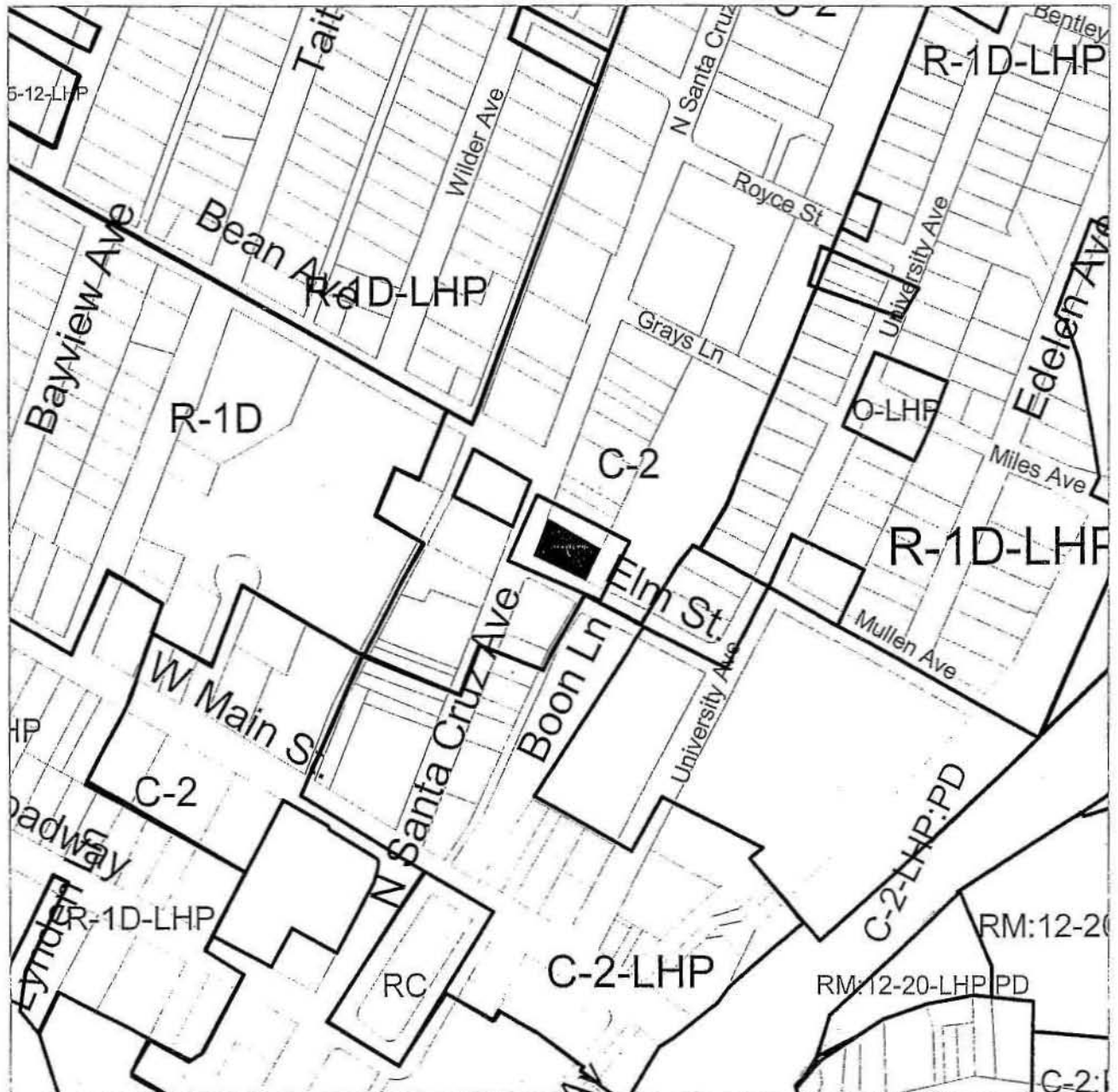
Bud N. Lortz, Director of Community Development

Prepared by: Sandy L. Baily, Associate Planner

BNL:SLB:mdc

cc: Nicholas A. Difu, 19720 Oakmont Drive, Los Gatos, CA 95033
Michael T. Cobler, 900 E. Campbell Avenue, Campbell, CA 95008

42 and 44 Elm Street



REQUIRED FINDINGS FOR

42 and 44 Elm Street

Conditional Use Permit U-05-013

Requesting approval to expand an existing restaurant (Café Rouge), add additional seats and for an alternating use of parking on property zoned C-2. APN: 529-03-035

PROPERTY OWNER: Michael T. Cobler

APPLICANT: Nicholas A. Difu

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
- As required by Section 29.10.150(e) of the Town Code for alternating use of parking that the alternating use of such spaces will not result in fewer parking spaces than required for the use.
- 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.
- It has been determined that this project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

N:\DEV\FINDINGS\42elm.wpd

RECOMMENDED CONDITIONS OF APPROVAL FOR:

42 and 44 Elm Street

Conditional Use Permit U-05-013

Requesting approval to expand an existing restaurant (Café Rouge), add additional seats and for an alternating use of parking on property zoned C-2. APN: 529-03-035

PROPERTY OWNER: Michael T. Cobler

APPLICANT: Nicholas A. Difu

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:
(Planning Division)

1. NUMBER OF SEATS. The number of seats shall not exceed ~~12 total, including both indoor and outdoor seating~~ **50 (38 inside and 12 outside)**.
~~HOURS OF ALCOHOLIC BEVERAGE SERVICE. The maximum hours of alcoholic beverage service shall be from 11am till 11pm seven days a week.~~
2. HOURS OF OPERATION. The maximum hours of operation shall be from ~~6:00am to 1:00am seven days a week~~ **11:30 AM to 9:30 PM seven days a week**.
3. **RESTAURANT USE. A fine dining restaurant is permitted.**
4. ALCOHOLIC BEVERAGES. **Beer and wine are permitted to be served with meals.** No alcoholic beverages shall be served without meal service. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. **Meals shall be served at the bar counter area.**
5. **ENTERTAINMENT. There shall be no entertainment.**
6. HOLD HARMLESS. A hold harmless agreement shall be ~~recorded~~ **maintained** releasing the Town from any liability relating to the outdoor seating.
7. TAKE OUT. Take out food shall be served in recycled material containers.
8. UTENSILS. All beverages and food served on site shall be served on reusable materials.
9. TRASH. Operators of the restaurant shall pick up trash in the vicinity of the restaurant when outdoor seating is available.
10. LAPSE FOR DISCONTINUANCE. If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
11. **TRANSFER OF PARKING CREDITS. Prior to filing a building permit for the tenant improvements, the applicant/property owner shall submit the required written agreements regarding the transfer of the parking credits. These documents shall be reviewed and approved by the Town.**

(Building Division)

12. PERMITS REQUIRED: A building permit shall be required for the tenant improvement for the future restaurant. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
13. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on

- the **cover sheet** of the construction plans.
14. **SIZE OF PLANS:** Four sets of construction plans, maximum size 24" x 36."
 15. **TITLE 24 - COMMERCIAL:** For any proposed tenant improvements, on-site general path of travel shall comply with the latest California Title 24 Accessibility Standards. Work shall include, but not be limited to, accessibility to building entrances from parking facilities and sidewalks.
 16. **TITLE 24 - RESTAURANT USE:** Proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:
 - a. West Valley Sanitation District: (408) 378-2407
 - b. County Health Department: (408) 885-4200
 - c. Town Public Works Department: (408) 399-7530
 17. **SPECIAL INSPECTIONS:** When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov.
 18. **NONPOINT SOURCE POLLUTION STANDARDS:** The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print.
 19. **PLANS:** The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538)
 20. **APPROVALS REQUIRED:** The project requires the following agencies approval before issuing a building permit:
 - a. Community Development: Judie Gilli at 399-5702
 - b. Engineering Department: Fletcher Parsons at 395-3460
 - c. Public Works Department: (408) 399-5777
 - d. Santa Clara County Fire Department: (408) 378-4010
 - e. West Valley Sanitation District: (408) 378-2407
 - f. Department of Environmental Health: (408) 918-3400

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:
(Engineering Division)

21. **TRAFFIC IMPACT MITIGATION FEE.** The developer shall pay a proportional to the project's share of transportation improvement needed to serve cumulative development within the Town of Los Gatos. The fee amount will be based upon the Town Council resolution in effect at the time the building permit applications is made. The fee shall be paid before the building permit is issued. The traffic impact mitigation fee for this project, using the current fee schedule and the preliminary plans is \$2,784.00. The final fee shall be calculated from the final plans using the rate schedule in effect at the time of the building permit application, using a trip generation rate based on Quality Restaurant use.

22. **GENERAL.** All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
23. **ENCROACHMENT PERMIT.** All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
24. **CONSTRUCTION STREET PARKING.** No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
25. **SILT AND MUD IN PUBLIC RIGHT-OF-WAY.** It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris **SHALL NOT** be washed into the Town's storm drains.
26. **RESTORATION OF PUBLIC IMPROVEMENTS.** The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
27. **SANITARY SEWER LATERAL.** Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.
28. **SANITARY SEWER BACKWATER VALVE.** Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.

29. **OUTDOOR TRASH ENCLOSURES.** Prior to building permit final, outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided within the enclosure. Temporary trash enclosures are exempt from this condition.
30. **GREASE TRAPS.** Meet all requirement of the Santa Clara County Health Department and West Valley Sanitation District for the interception, separation or pretreatment of effluent.
31. **CONSTRUCTION NOISE.** Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

32. ~~ALCOHOLIC BEVERAGES:~~ Beer and wine may be served only with meals at the restaurant. No beer or wine may leave the premises. A meal is be defined as a combination of food items selected from a menu which would constitute a normally accepted meal (breakfast, lunch, dinner, or brunch).
33. **GENERAL.** The restaurant/bar is subject to the following:
- a. Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
 - b. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
 - c. All establishments shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
 - d. All licensed operators shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
 - e. Taxicab telephone numbers shall be posted in a visible location.
34. ~~ALCOHOLIC BEVERAGE SERVICE~~ **OUTDOOR DINING:** Beer and wine may be served with meals in the outside patio area as long as there is a barrier or fencing, 3 feet in height surrounding the patio area and separating it from the sidewalk. The barrier or fencing may be a combination of fencing and shrubbery to equal 3 feet. A hostess shall be stationed at the patio entrance at all times.

TOWN OF LOS GATOS COMMUNITY DEVELOPMENT DEPT.
110 E. Main Street
Los Gatos, CA 95030

April 15, 2005

Dear Ladies & Gentlemen,

RECEIVED
APR 15 2005
TOWN OF LOS GATOS
PLANNING DIVISION

My name is Nick Difù and I am writing you this letter to explain my proposal to open a new restaurant in the downtown area of Los Gatos. I have worked as an Executive Chef in two well known local restaurants (Café Marcella, at which I received 4 stars and The Wine Cellar, at which I received 3.5 stars) and now I would like to open my personalized food service establishment in the town in which I have lived in for the past 11 years.

My intentions are to purchase an existing food service space in downtown, remodel the interior only and redesign the area to create an upscale "white table cloth" dining atmosphere that will further enhance the already well-known dining culture for which Los Gatos is known. I would like to buy the existing restaurant with it's approval tenant space, combine that with the adjacent retail space for added seating and start serving the community with a specialized "fine dining" menu to please the palette.

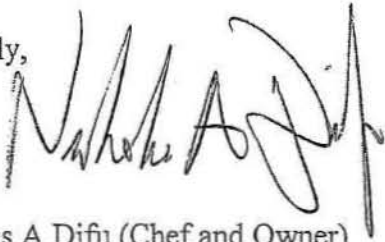
I have worked hard with the help of Mike Rowe (local architect), Peter Christensen (kitchen designer), and Alan Fargo (local contractor) to design a restaurant plan that is in compliance with all Santa Clara County Health Codes and we are looking forward to working with the Planning & Building Departments to complete the process. Upon initial meetings with the Town of Los Gatos planning Department, the parking has been determined to be satisfactory with the addition of 9 "Parking Assessment District" spaces, combined with those spaces already credited to the existing restaurant. This will give us a total of 50 seats for the interior and exterior patio. This will also include a food service counter that will hold 10 people. This counter and open kitchen is very important to our "theme" and what our restaurant is all about. There will be at least three Culinary graduates working in the restaurant so that we may answer, show and explain exactly what we are doing in the kitchen and how we are doing it. I want our public not only to enjoy a fancy meal but I also want them to feel that they have there own personal Chef explaining to them what is going on. Our service staff will also have the training by myself and General Manager Shannon Coker (Los Gatos Alumni) so that they are also educated in fine dining service. The interior design and remodeling of the space will be minimal with no impact on the exterior façade other than signage.

The restaurant will be called "Nick's on Elm" and will offer an unforgettable dining experience in a warm and romantic semi-casual environment. We will be open from 11:30 a.m. until 2:00 p.m. for lunch Tuesday through Sunday and 5:00 p.m. to 9:30 p.m. Tuesday through Sunday for dinner. These hours of operation will allow the customers to sit longer so that the flow of traffic will be less in town than getting a quick cup of coffee at a bakery or coffee shop. As Owner and Executive Chef I will be offering many of my signature creations that the community has been enjoying for the past 6 years. I, along

with my team, will also develop a small but exclusive wine list that will complement our "Los Gatos Cuisine". With the help of my architect and kitchen designer we will be developing an exposition kitchen, which will set the tone for the customer so as if they were at there own home with there own personal Chef. My goal is to develop a cuisine that focuses on the Town Of Los Gatos, and that is why my cuisine will be called "Los Gatos Cuisine". We are a town of young families, students, singles, executives and more traditional families. I feel with my experience and acute attention to what the public wants I will develop a menu that will satisfy them all.

We are excited to provide a new and unique dining experience for which we can all be proud. I hope that after reviewing my application, resumé, design plans and talking with me personally, you will be able to approve my project with enthusiasm and appetite for quality dining.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas A Difu". The signature is stylized with large, sweeping loops and a prominent initial "N".

Nicholas A Difu (Chef and Owner)

Date: May 25, 2005
For Agenda Of: May 25, 2005
Agenda Item: 2
DESK ITEM

REPORT TO: The Planning Commission
FROM: The Director of Community Development
LOCATION: 42 and 44 Elm Street
Conditional Use Permit U-05-013

Requesting approval to expand an existing restaurant (Café Rouge), add additional seats and for an alternating use of parking on property zoned C-2. APN: 529-03-035
PROPERTY OWNER: Michael T. Cobler

EXHIBITS: A - D. Previously Submitted. April 21, 2005.
E. Letter from L. Justo A-Hernandez aka Larry Arzie (one page) received May 19, 2005
F. Email from Dena Crawford (one page) received May 25, 2005.
G. Email from Charissa L. Willard (one page) received May 25, 2005.

REMARKS:

Attached is a letter (Exhibit E) and emails (Exhibit F & G) from concerned citizens.

If approved, condition #3 should be amended as follows so that the type of restaurant is consistent with Town Code definitions.

RESTAURANT USE. A ~~fine dining~~ **high quality** restaurant is permitted.



Bud N. Lortz, Director of Community Development

Prepared by: Sandy L. Baily, Associate Planner

BNL:SLB:mdc

N:\DEV\REPORTS\2005\42ELM.dsk.wpd

May 19th 05

RECEIVED

MAY 19 2005

Planning Commission
Town of Los Gatos

Re: 42 44 Elm st. U 05 01
TOWN OF LOS GATOS
PLANNING DIVISION

The normal progression in Los Gatos for increasing table space over and above the allowed seating is to just do it or go outside to do it. The progression in changing type of use for a food operation is from a bakery to a coffee house to a cafe and now a wine bar is more duplicitous but with verasity and time it can be done as is the case here. We were to have stopped issuing further use permits for food operations in the C.B.D. or allowing existing ones to grow in size after the finding of the general plan review committee were issued. But that is not the case. If we allow increased use of this cafe we are setting ourselves up. This premises is currently underutilized but with the addition of more outdoor seating it becomes a viable product to put on the market and sell to a more aggressive restauranteer and therefor increasing the density and use of the property.

If allowed to happen the logical consideration by you would be to close down part of the buiding in order to reduce the size if appropriate since a parking space will be removed. I presume this space was factored into the use permit and without it the property owner will have to either pay more into the parking district or reduce the size of the building. This is a private on site space but never the less it was used for loading and unloading. Without it where do the tennants trucks unload? The Parking lot? The Street? In any event to the disadvantage of thier neighbors. This parking space was part of the original permits and should be kept as same.

Not too long ago to the shock of a few council members I talked with you allowed this coffee house a beer and wine permit to be served with food only. To my knowledge there is not even a proffession or legal county health food code approved kitchen in there and they offer a salad and sandwich etc not coffee shop or restaurant meals. I have often walked by or gone inside to see wine or beer served outdoors without the normal fenced in area required or served inside and in both cases without food of which no it was not forthcoming. If we approve this it will again come before you to increase thier hours of operation. And again we will re-inforce the belief that in this town it is the normal way to turn a bakery, a Ice cream parlor, a juide bar or any minimal food operation into a full fledged restaurant and in this case a want to be wine bar.

I respectfully request that you deny this continued overintensification of the C.B.D. and draw a line in the sand to let it be known that we have enough of these kinds of progressions.

Respeofully

L. Justo A. Hernandez

Exhibit E

From: Dena Crawford <dnadance@earthlink.net>
To: Los Gatos Town Planning <planning@losgatosca.gov>
Date: 5/25/2005 12:33:30 PM
Subject: 44 Elm Street Proposal change to restaurant

Dear Town Planning,

I am very concerned to hear of the proposed change of the current Children's Salon and next door european-style Cafe to yet another fine restaurant, at 44 Elm Street. We have so many nice restaurants, and I feel the loss of both the salon for children and the next door cafe would be a very sad loss for our community. Belgi and her husband who own these two businesses are very nice people and to replace their unique businesses with another restaurant would be an unfortunate change for not only these two lovely business owners, but also for those of us who frequent their establishments.

Sincerely,

Dena Crawford
resident, Los Gatos

From: Charissa Willard <charissa.willard@comcast.net>
To: "planning@losgatosca.gov" <planning@losgatosca.gov>
Date: 5/25/2005 2:45:11 PM
Subject: Against Conditional Use Permit U-05-013

I am against Conditional Use Permit U-05-013. My husband and I have walked our dog to Cafe Rouge almost every Saturday morning for coffee since it has been in business. We also enjoy being able to go to Cafe Rouge for a glass of wine in the evening. There is really no other business like it in town.

Sincerely,
Charissa L. Willard
436 University Ave.
Los Gatos, CA. 95032

42 and 44 Elm Street
Conditional Use Permit U-05-013
Requesting approval to expand an existing restaurant (Café Rouge), add additional seats and for an alternating use of parking on property zoned C-2.
APN: 529-03-035
PROPERTY OWNER: Michael T. Cobler
APPLICANT: Nicholas A. Divu

Dear Mr. Rowe,

Thank you for your letter and your perspective.

Obviously there are numerous issues to consider re this application, but I wanted to respond to one of the questions you raised in your closing. You asked: "Do we really want to chase local business entrepreneurs out of town?"

As Mayor of this wonderful Town, I can say, " Definitely not."

Frankly, I don't want to see our current OR potential businesses, going anywhere without a Los Gatos address.

The ideal would be to see all our vacancies throughout Town (Santa Cruz Ave, Main St, University, Pollard, LG Blvd, Blossom Hill, etc. etc), filled one day.

Your letter will become part of the file and will be reviewed and considered by all.

Thank you again....Mike Wasserman

>>> Michael rowe <peloncito@mac.com> 06/02/05 9:30 PM >>>

Dear Mr. Mayor & ladies & gentlemen of the Town Council,

I am writing to you for a couple of reasons. One, I wanted to make sure you received this letter well prior to the scheduled Town Council meeting where the above referenced "Conditional Use Permit" application will be before you. And two, there is no way I would be able to get all of this out in three minutes @ the public hearing.

I am very concerned about the Planning Commission's logic, reasoning & the manner in which they substantiated their denial of the CUP application for an expansion of an existing food service business located @ 42 & 44 Elm Street (currently Cafe Rouge coffee/restaurant). I am involved with the project in a very limited manner, specifically a structural engineering aspect. However, I was not involved with the design of the new space, nor do I have a financial interest. My concern as a local citizen and spouse of a downtown merchant is the underlying reason I am writing to you regarding this application.

I should first summarize what I experienced and understood @ the Planning Commission hearing dated May 25th, 2005. The applicant, chef Nick Difu who is a four star local chef responsible for creating exciting and delicious menus at three of the best restaurants in Los Gatos (Cafe Marcella, The Wine Cellar & currently "180" across from Mountain Charley's) applied to open his own restaurant at the Cafe Rouge location. His plans included a renovation of Cafe Rouge & a small expansion into the adjacent space, what is currently "Beba" (Hair Salon). The owner's of Cafe Rouge were present at the hearing and objected to the application based on a claim that they have an existing lease and that they had no intention of vacating the space. Town Attorney, Mr. Korb pointed out to the Planning Commission that their approval of this application (if granted) had nothing to do with any landlord/tenant dispute and such approval of the application would still be contingent on that issue being resolved before a new business could "open doors". Another downtown merchant

opposed the application citing, "Intensification of Use" as his reasoning. Furthermore, one of the planning commissioners was concerned over the parking situation at this location and in the end a denial of the application was handed down based on several inconsistencies of town policy, ulterior motives (in my opinion) and improper procedure during the hearing. I would like to address each of these issues below.

This information was not made public at the Planning Commission. I was personally present at a meeting with the current owner's of Cafe Rouge where they presented Mr. Difu with a plan they had drawn up by a well known commercial restaurant/kitchen designer which incorporated both spaces (Cafe Rouge & Beba) since they currently own and operate both businesses. Their plan was very similar to what Mr. Difu submitted and is now part of the Conditional Use Permit application for your consideration. For some reason the current owners decided not to follow through with their own plan and encouraged Mr. Difu to proceed with the application if he was interested in buying their business. Two concerns arose immediately. How many parking spaces are allocated to that space (for seating) & would the current lease would granted or transferred to Mr. Difu. Mr. Difu approached the landlord for verification that he could acquire and/or be transferred a lease and whether there would be a problem removing a wall in the landlord's building. At that point, the issue of the landlord/tenant dispute became public and apparent. Mr. Difu decided to remain neutral and proceed with his application, hoping that the dispute would be settled one way or another, knowing his application would be subject to this dispute. When Mr. Difu decided not to buy the existing business until the dispute was settled, is when the current owner's of Cafe Rouge and Beba objected to the application.

Even after advisement by Mr. Korb, the Planning Commission was directing questions to public speakers asking for clarification or details regarding the ongoing dispute. The Planning Commission is definitely not the right forum for this line of question and answer dialogue. The Planning Commission is NOT a court house! When questioning started getting back to the actual merit of the application, additional inconsistencies arose. The "Intensification of Use" argument is absolutely ridiculous! The existing business (Cafe Rouge) is a full food service operation with a valid beer & wine license. Simply stated, a RESTAURANT, not a speciality coffee store as it was categorized at the hearing. The applicant's restaurant proposal is not a different or "intensified" use, but rather one restaurant for another. As far as the space expansion is concerned, the removal of a hair salon and/or portion of a coffee house is hardly a detriment to our town. In fact, I believe there is an ongoing moratorium on new hair salons being permitted and more coffee outlets than I can count!

The parking situation was a concern of the applicants well before the planning commission even saw or heard of the application. In fact, the applicant is in contract to purchase several spaces from the allocated "Parking Assessment District" spaces which would be required to make up for the additional proposed seating and for the additional space of the expansion per Town of Los Gatos Planning

Guidelines. Commissioner Burke was concerned over the use of the acquired parking spaces at this location, when their origination was from another commercial building located a few blocks away. That is exactly why it is considered a "Parking District". Those spaces are supposed to be available for use anywhere in the entire district as long as they are allocated spaces which are part of the Assessment District (which are PAID for). Furthermore, commissioner Burke made several potentially persuasive comments before and after the public portion of the hearing was closed and only then recused himself due to a personal conflict of interest, AFTER the vote was already made, denying the application.

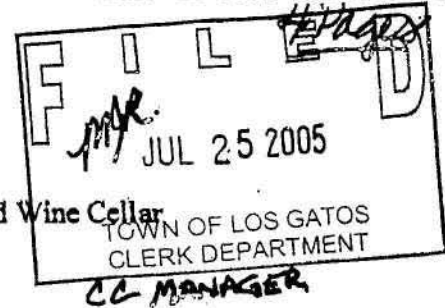
Aside from all of the above facts, the application should have been approved for the following reasons:

1. Staff recommendation of approval
2. The use of the space is an "identical" use business and NOT an intensification.
3. The applicant provided all of the required parking for the proposed use.
4. The applicant is a local citizen & chef, proposing to operate a local business and has done so in the past.

What more can the Town ask for? Do we really want to chase local business entrepreneurs out of town? The Town of Los Gatos is a known for its great dining experiences, personal service businesses and retail stores. I continue to hear how the Town of Los Gatos wants to remain a friendly, charming community, promoting local businesses. How can we continue to make this claim if we force this award winning chef to relocate to Santana Row or another local community who will gladly take advantage of the fine dining Mr. Difur can provide. With this application, it will be our gain or our loss! Feel free to contact me for further comment.

Sincerely,

Michael Rowe



Town Council, Town of Los Gatos

Re: Changes in conditional use permits for Café Rouge and Wine Cellar

Dear Council members,


I would like to point out to you as I did on the letters attached to Planning and to you, that the vitality of the CBD is at the most precarious point that I have seen since the 1970s. We have vacant store fronts with for lease signs that have been up for months. Normally it takes 30 days or less to rent a space. This is not because of the effects of the recession. Willow Glen does not seem to have this problem. Rather this is due to the transformation of the CBD from a comfortable mix of tenants to a ghetto of food oriented and service professional operations. The heady days prior to the recession kept us going no matter the disproportionate High Use encroachments. Due to inappropriate choices of tenants and lack of proper planning there is considerably less retail in town (not including Old Town) than there was during the 90s. The days of "we can do no wrong" are over with.

The reality of this lopsided mix is not just less parking and poor circulation but the loss of truly what made Los Gatos Shine and the desire for upper end stores to locate here. They brought in the carriage trade that patronized the mom and pops as well. We have lost most of these operations to mediocrity and redundancy. The handwriting has been on the wall for years but unfortunately we have a history of making wrong decisions during downturns in the economy. The recommendations of the general plan review committee have yet to be addressed on this issue and instead of decreasing the intensification of the CBD we have in actuality passed up opportunities to bring in more retail and allowed new or replacement high use operations to open.

The two applications before you present problems because we have not taken the action the general plan review committee has suggested by legislating a halt and reduction of further intensification in the CBD in order to keep it a viable RETAIL district. I would hope that you take steps forthwith to do this and deny ANY request for increase in USE. We do not need a dance hall in Old Town, we approved their existing permits with limitations due to existing high density. If you approve it you will be setting a precedence that others will want as well. We do not need beer and wine served in coffee houses of which the precedence has already been set with Café Rouge. What will you say to Terri Hope if she too wants to serve beer and wine in her coffee house.

Further intensifications are unacceptable in the CBD. The planning commission made the correct decision in not allowing the removal of a parking space, allowing more seating, and changes of hours. You can not approve one application without the other. The solution is therefore simple: follow the will of the community through the direction of the plan review committee and start reducing intensification in the CBD.

Respectfully,


Larry Justo Arzie

July 25.05

RECEIVED

JUL 25 2005

TOWN OF LOS GATOS
PLANNING DIVISION

Attachment A

Planning Commission
Town of Los Gatos

Re: 42 44 Elm st. U 05 013

The normal progression in Los Gatos for increasing table space over and above the allowed seating is to just do it or go outside to do it. The progression in changing type of use for a food operation is from a bakery to a coffee house to a cafe and now a wine bar is more duplicitous but with verasity and time it can be done as is the case here. We were to have stopped issuing further use permits for food operations in the C.B.D. or allowing existing ones to grow in size after the finding of the general plan review committee were issued. But that is not the case. If we allow increased use of this cafe we are setting ourselves up. This premises is currently underutilized but with the addition of more outdoor seating it becomes a viable product to put on the market and sell to a more aggressive restauranteer and therefor increasing the density and use of the property.

If allowed to happen the logical consideration by you would be to close down part of the buiding in order to reduce the size if appropriate since a parking space will be removed. I presume this space was factored into the use permit and without it the property owner will have to either pay more into the parking district or reduce the size of the building. This is a private on site space but never the less it was used for loading and unloading. Without it where do the tennants trucks unload? The Parking lot? The Street? In any event to the disadvantage of thier neighbors. This parking space was part of the original permits and should be kept as same.

Not too long ago to the shock of a few council members I talked with you allowed this coffee house a beer and wine permit to be served with food only. To my knowledge there is not even a proffession or legal county health food code approved kitchen in there and they offer a salad and sandwich etc not coffee shop or restaurant meals. I have often walked by or gone inside to see wine or beer served outdoors without the normal fenced in area required or served inside and in both cases without food of which no it was not forthcoming. If we approve this it will again come before you to increase thier hours of operation. And again we will re-inforce the belief that in this town it is the normal way to turn a bakery, a Ice cream parlor, a juice bar or any minimal food operation into a full fledged restaurant and in this case a want to be wine bar.

I respectfully request that you deny this continued overintensification of the C.B.D. and draw a line in the sand to let it be known that we have enough of these kinds of progressions.

Respectfully

Justo
L. Justo A. Hernandez

Attachment (B.)

Town of Los Gatos
Planning Commission

Re: 50 university 180 U-03-7

Those of you who followed or were on the Town general plan review committee will remember that we finalized our 2 years with a list of recommended changes to the general plan. One of these clearly indicated that we wanted to keep the character of a small town and one way to do this was to reduce the use and activity or density of the Central Business District.

Lately we have had a number of cases where this could have been done and in one case even overtly going against the recommendations of the will of the community through the general plan review committee, by allowing a previous closed down Swensons coffee and Ice cream parlor to be split into two new restaurant uses and with the addition of more seating outside. We had the opportunity to allow only the new Ice cream "National Franchise" to occupy part of that space. By the way I don't think they went through the process of a formula operation review through you, another loophole in our ordinances. Instead approved even though there was no obligation on our part to do so a second eatery thereby further increasing destination operations instead of allowing more retail commerce to occupy the space in order to try to return the C.B.D. to a retail district with less food orientation. We currently have other similar problems happening when professional offices vacate and release to professional offices instead of attempting to lease to retail as required by ordinance. Another is the retail jewelers at the corner of Bachman being turned into professional medical.

With this in mind we are obligated to be diligent in not allowing further intensification no matter how small it may seem to reduce not increase traffic, parking, and congestion in the central business district in order to vitalize retail commerce instead of making it more difficult for them. To add more seating inside or out and to increase hours of operations or music venues to a use permit when not part of the original requests for operating is not acceptable or fair to the residents who live adjacent to this restaurant and the other merchants in an already overburdened C.B.D.

In this community it is normal to just do things and ask for permission later, and in most cases it works. But in this case if this request brings even one more car into town it is one more straw that in the total outweighs our ability to operate an economically viable C.B.D.

Respectfully,

L. Justo A. Hernandez

Justo May 19th

attachment (C)

TOWN COUNCIL : re: 50 University Ave. Suite 180 Conditional Use Permit U-0307

Dear Council Members

Some day I will learn how to use my computer to write letters and use spell check. I just can't get it printed on the paper correctly. But I am getting there. In the Mean time you have to suffer through my using the IBM typewriter.

I have been accused by some of you as too exagerating. This I don,t do but will admit to a bit of dramatization for sure. In the case of continued approval of increased density in the C.B.D. exageration might be called for but I,ll stick with numbers instead.

Danielle Surdin recently outlined the quantatative number of 18% national or formula operation in Town. I have discussed with her that this figure would be more informative if it were based on other factors such as square footage, and locations to give a truer picture of how they effect the community. More important might be calculations incorporating many factors of what effects high USE operations have on the Central Business District. By this I mean anything not retail and incumpasing, office, proffessional, service proffessional, food service, bars, etc. I pose this thought as I trully believe that the vitality of the C.B.D. has been so incumbered by non-retail operation that we are at a point of true concerne.

To refine the impact of non retail operation we need to grid out the C.B.D. to find true ratios of comparison before we can continue to grant increased seating, music, hours, or concessions to high use operations. Untill this is done I hope that you allow no further intensification no matter how small.

On Main st. alone from Lyndon Plaza to the Bridge there are 27 store fronts. Of this there are 11 in use for food operations. Slightly around 40%. Now I am going to speculate not exagerate. If you factor in how much square footage they occupy I would guess 50% of the ground space. If you factor all other high use operations and throw in residential as well based on square footage it might be around 80%. Santa Cruz ave. from Main St. to Bachman is even more dense.....

I realize that Old Town is asking for very little now that Oakville grocery is no longer serving food which would bring it back to status quo but that is not the point. We have been asked by the General Plan Review Committee to reduce the usage not increase it in the C.B.D. With 80% (speculation) of the square footage in the C.B.D. being destination locations, it has to be a hardship on both the nearby residents and merchants and we must do everthing possible to eliviate this.

Please say no to this request for further increase of intensity in the Use Permit and any others untill a proper equation can be arrived at that alerts us to the danger of being lopsided with destination locations. I trully believe we are at a turning point to the worse (a little exageration) and need to protect the vitality of the Village.

Sincerely,

Larry Justo Arzola

2 letters attached for your review.