



MEETING DATE: 08/07/06

ITEM NO: 16

COUNCIL AGENDA REPORT

DATE: July 26, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER A REQUEST TO MODIFY A CONDITIONAL USE PERMIT TO INCREASE THE SEATING, ALLOW SPECIAL EVENTS, AND WINE BAR WITH RETAIL SALE ON PROPERTY ZONED C-2. CONDITIONAL USE PERMIT U-06-20 APN 529-03-035. PROPERTY LOCATION: 42 ELM STREET PROPERTY OWNER: MICHAEL COBLER APPLICANT: BELGHIS AND FARHAD PROUSHANI

RECOMMENDATION:

1. Hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Approve Conditional Use Permit Application U-06-12 (requires motion).
4. Refer to the Town Attorney for the preparation of the appropriate resolution.

BACKGROUND:

Café Rouge currently operates with a Conditional Use Permit that allows for a 12 seat high turnover/sit-down restaurant that serves beer and wine with meals. The approved hours of operation are from 6:00AM to 1:00AM seven days a week with alcohol service limited to 11:00AM to 11:00PM seven days a week. Please see the Planning Commission Staff Report for a complete description of the existing operation (Attachment 1).

PROJECT SUMMARY:

The applicant is requesting approval to modify the Conditional Use Permit for Café Rouge to allow a total of 40 seats, alcohol service without a meal, retail wine sales, wine tasting bar, and special events with alcohol service. The only exterior changes proposed are planters and seats in an existing loading area on the property (Attachment 1, Exhibit I). The proposed hours of operation will remain the same.

PREPARED BY:

Bud N. Lortz
BUD N. LORTZ

DIRECTOR OF COMMUNITY DEVELOPMENT

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Reviewed by: PSJ Assistant Town Manager OK Town Attorney
____ Clerk Administrator ____ Finance ✓ Community Development

DISCUSSION:

USE

The applicant is requesting to modify their Conditional Use Permit. Please refer to the Planning Commission Staff Report for a complete description of the proposed project (Attachment 1). The applicant believes that the request is similar to the approval granted to the Los Gatos Coffee Roasting Company. The following is a table comparing the applicant's request and the approved conditions of approval for the Los Gatos Coffee Roasting Company (Attachment 6):

	Café Rouge Requests	Los Gatos Coffee Roasting Company Approved Conditions
Uses	Restaurant, Wine Bar, Retail, Entertainment	Coffee Shop, Delicatessen, Wine Bar, Entertainment, and Specialty Food Market.
Hours of Operation	6:00AM to 1:00AM (Seven days/week)	6:00AM to 10:00PM (Seven days/week)
Hours of Alcohol Sales	11:00AM to 11:00PM (Seven days/week)	11:00AM to 9:30PM (Seven days/week)
Entertainment with Alcohol Sales	Yes	No
Retail Sales of Off-Site Alcohol	Yes	Yes
Alcohol Sales Only with Food Sales	No	Yes
Wine tasting	Yes	Yes
Seats	40	52 seats indoor (6 outdoor on benches)
Parking	Does not comply with parking requirements	Complies with parking requirements

PARKING

The applicant is requesting approval for 40 seats, which require 14 parking spaces. 21 seats are proposed inside and 19 seats are proposed outside. Please see Attachment 1, Exhibit I for the proposed seating plan.

The following table shows the proposed seats, required parking spaces and provided parking spaces for the project site.

Use	Square Feet	Required Parking	Parking Provided
Retail	2,423 s.f.	8	8
Personal Service	1,152 s.f.	4	4
Café Rouge	40 seats	14	3
TOTAL		26	15

The proposed and existing uses on the project site require 26 parking spaces. Fifteen spaces are provided through the Parking Assessment District. The proposal of 40 seats is not consistent with the Town Parking requirements. Please see the applicant's justification and request for approval of this portion of the application (Attachment 1, Exhibit D). The applicant states that the stores on the subject site do not generate a high volume of traffic and demand for parking. Staff advised the applicant that the proposed project is not consistent with the Town's parking requirements. The Los Gatos Coffee Roasting Company complies with the Town's parking regulations which has a credit of 19 parking spaces through the Parking Assessment District.

ALCOHOL SERVICE

The applicant is requesting the ability to serve beer and wine independently from meals. The proposal is not consistent with the Town's Alcohol Policy which discourages stand alone bars or restaurants with separate bars and only allows alcoholic beverages if served with meals. The proposal is not similar to the CUP granted to the Los Gatos Coffee Roasting Company which requires alcohol to be sold with meals.

WINE TASTING BAR

The applicant is requesting a wine tasting bar which will offer a one ounce serving of wine without food service. Wine tasting will occur during normal alcohol service hours. Wine tasting is allowed with a CUP and was recently approved for the Los Gatos Coffee Roasting Company.

RETAIL WINE SALES

The applicant is requesting off-site retail sales of wine. Retail wine sales are allowed with a CUP and were recently approved for the Los Gatos Roasting Company.

SPECIAL EVENTS

The applicant is proposing to hold special events with alcohol service. The events will include multi-cultural poetry readings, musical events, and open-mike events and will occur Sundays-Wednesdays (Attachment 1, Exhibit D). Special events were allowed in the CUP for the Los Gatos Coffee Roasting Company but without alcohol service.

LOADING ZONE AND OUTDOOR SEATING AREA

The applicant is requesting to utilize the existing loading zone, located on the property, as an outdoor seating area with landscaping improvements to address public safety concerns and a barrier, approved by the Chief of Police, to address concerns regarding alcohol sales.

HOURS OF OPERATION

The applicant is requesting to maintain their existing hours of operation and hours of alcohol service. The approved hours of operation are from 6:00AM to 1:00AM seven days a week with alcohol service limited to 11:00AM to 11:00PM seven days a week. In order to continue alcohol service beyond 10:00PM, the required findings from Section II of the Town's Alcohol Policy must be made (Attachment 1, Exhibit E).

APPLICANT INPUT

The applicant submitted a letter on July 20, 2006 reiterating their desire to operate with 40 total seats and Alcohol Beverage Control License Type #41 (Sale of beer and wine for consumption on or off premise for restaurants). Further, in a letter submitted on July 21, 2006, the applicant requested additional changes to the conditions of approval (Attachment 3) to clarify their proposed use (Attachment 5). Staff does not recommend the applicant's requested changes to the conditions of approval. The conditions of approval reflect the recommendations provided by the Planning Commission. If the Town Council wishes to revise the conditions of approval, Staff will return the revised conditions of approval to the Town Council for approval.

TRAFFIC

The proposed increase from 12 to 40 seats will result in a net increase of 96.6 Additional Daily Trips (ADT) and 8.4 PM peak hour trips, which will require a finding of Community Benefit and a Traffic Impact Mitigation Fee. If the project is approved without an increase in seats, the Community Benefit and Traffic Impact Mitigation Fee are not required.

GENERAL PLAN CONFORMANCE

The parcel is designated as Central Business District on the General Plan 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.

PLANNING COMMISSION DISCUSSION:

On June 28, 2006 the Planning Commission heard public testimony and discussed the issues regarding the proposed project.

The Planning Commission recommended approval of two aspects of this application. The Planning Commission only recommended approval of wine tasting and retail sales of alcohol for off-site consumption. The recommended hours when these activities may occur are from 11:00 AM to 10:00 PM, seven days a week. All other requested uses were not recommended because they conflict with the Town's Alcohol Policy and current zoning regulations.

ALTERNATIVES:

The following alternative actions are available to the Town Council:

1. Concur with the Planning Commission's recommendations and approve the CUP with the conditions included as Attachment 3.
2. Modify or delete any of the proposed uses to address Council concerns.
3. Modify the hours of operation for the business and/or the special events.
4. Require specific portions of the proposed CUP to expire after one or two years. The applicant would be required to obtain an extension to the Town Council for consideration. There will be a fee associated with this process.

CONCLUSION:

The Town Council should review the Planning Commission's recommendation and determine if the proposed use is consistent with the General Plan, Zoning Code, and Town's Alcohol Policy. Pursuant to the Town's Alcohol Policy, the Town Council has the authority to take final action on this application upon consideration of a recommendation from the Planning Commission.

PAGE 6
MAYOR AND TOWN COUNCIL
SUBJECT: 42 ELM STREET
August 1, 2006

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

FISCAL IMPACT: None

ATTACHMENTS:

1. Staff report to the Planning Commission dated June 23, 2006 and Desk Item to the Planning Commission dated June 28, 2006.
2. Required Findings and Considerations (1 page)
3. Recommended Conditions of Approval (3 pages)
4. Letter from Applicant dated July 20, 2006 (2 pages)
5. Letter from Applicant dated July 21, 2006 (1 page)
6. Town Council Resolution 2006-072 to approve Conditional Use Permit U-06-12 for the Los Gatos Roasting Company (7 pages)
7. Verbatim Meeting Minutes from Planning Commission for June 28, 2006 (13 pages)

Distribution:

Belghis & Farhad Proushani, 42 Elm St., Los Gatos, CA 95030
Michael Cobler, 900 E. Campbell Ave., Campbell, CA 95008

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Date: June 23, 2006
For Agenda Of: June 28, 2006
Agenda Item: 3

REPORT TO: The Planning Commission
FROM: The Development Review Committee
LOCATION: 42 Elm Street
Conditional Use Permit U-06-20

Requesting approval to modify a conditional use permit to increase the seating, allow special events, and wine bar with retail wine sale on property zoned C-2.

APN 529-03-035.

PROPERTY OWNER: Michael Cobler

APPLICANT: Belghis and Farhad Proushani

DEEMED COMPLETE: May 18, 2006

FINAL DATE TO TAKE ACTION BY: November 18, 2006

- FINDINGS:
- As required by Section 29.20.190 of the Town Code for the granting of a Conditional Use Permit
 - As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.
 - It has been determined that the project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.
 - As required by the Town's Alcohol Policy to serve alcoholic beverages past 10:00 P.M

- EXHIBITS:
- A. Required Findings (1 page)
 - B. Existing Conditions of Approval for 42 Elm St.
 - C. Recommended Conditions of Approval (3 pages)
 - D. Letter of Justification, Project Description(6 pages), received May 2, May 11 and May 18, 2006
 - E. Town's Alcoholic Beverage Policy, Resolution 2001-106, (4 pages)
 - F. Letter from Los Gatos Wine Company, (1 page) received May 5, 2006
 - G. Letter from Santa Cruz Mountains Winegrowers Association (5 pages), received on May 8, 2006
 - H. Letter from Muccigrosso Vineyards May 11, 2006 (1 page), received on May 5, 2006
 - I. Floor Plan, received May 11, 2006

RECOMMENDATION
SUMMARY:

Forward a recommendation to Town Council

A. BACKGROUND:

The applicant is requesting approval to modify the existing conditional use permit (CUP) for Café Rouge located at 42 Elm St. Please see Exhibit B for the existing conditions of approval. The current CUP allows a 12 seat restaurant that offers beer and wine with meals. Café Rouge is one of three businesses located on the project site. The other two uses are retail and personal service businesses.

It should be noted that the Town has contacted the applicants on several occasions regarding violations to their CUP. In 2004, staff contacted the applicant and informed them that the loading area had to be kept clear and the maximum number of seats is 12. In March of 2006, staff responded to reports that Café Rouge may be conducting a wine tasting bar. The Town's Code Compliance Officer contacted the applicant and advised them that wine tasting is in violation of their CUP. On April 17 and 20, 2006, the Town received two complaints from the public regarding Café Rouge. One person claimed that Café Rouge was selling alcohol without meals and the other claimed that Café Rouge was selling wine by the bottle for off-site consumption. Staff immediately informed the applicant that these activities violate their CUP. The applicant has since stopped retail sale of wine and serving alcohol without meals and filed for the subject CUP.

B. PROJECT SUMMARY:

The applicant is requesting approval to modify the existing CUP to allow additional seats, service of alcohol without a meal, retail wine sales, wine tasting bar and special events with alcohol service. There are no plans to revise the exterior of the building. The only exterior change proposed are the planter boxes that separate the outdoor seating area from the public area. The following chart is a summary of the proposal and whether it meets the Town Code requirements.

Proposed Use	Consistency with Town Code
Restaurant Use	CUP Required
Hours of Operation: 6:00 AM to 1:00 AM, seven days a week	CUP Required
Hours of Alcohol Service: 11:00 AM to 11:00 PM, seven days a week	CUP Required (additional findings required as part of Town's Alcohol Policy)
Wine tasting bar	CUP Required
Retail wine sales	CUP Required
Service of beer and wine without serving a meal	<u>Not consistent</u> with Town's Alcohol Policy

Special Events including cultural events, barbeques, art exhibitions and music events (Sundays through Wednesdays) with alcohol service.	<u>Not consistent</u> with Town's Alcohol Policy
40 Seats (indoor and out)	<u>Not consistent</u> with parking requirements

C. REMARKS

1. Additional Seats and Parking Requirements

The applicant is requesting approval for 40 seats, which require 14 parking spaces. 21 seats are proposed inside and 19 seats are proposed outside. Please see Exhibit I for the proposed seating plan.

The following table shows the proposed seats, required parking spaces and provided parking spaces for the project site.

Use	Square Feet	Required Parking	Parking Provided
Retail	2,423 s.f.	8	8
Personal Service	1,152 s.f.	4	4
Café Rouge	40 seats	14	3
TOTAL		26	15

The proposed and existing uses on the project site requires 26 parking spaces. Fifteen spaces are provided through the Parking Assessment District. The proposal of 40 seats is not consistent with the Town Parking requirements. Please see the applicant's justification and request for approval of this portion of the application (Exhibit D). The applicant states that the stores on the subject site do not generate a high volume of traffic and demand for parking. Staff advised the applicant that the proposed project is not consistent with the Town's parking requirements.

2. Hours of Operation

The applicant is not proposing a change in the hours of operation. They are proposing to hold special events during the existing hours of operation, limited to Sundays through Wednesdays. The existing hours of operation are as follows:

- Hours of Operation: 6:00 AM to 1:00 AM, seven days a week
- Hours of Alcohol Service: 11:00 AM to 11:00 PM, seven days a week
- Special Events limited to Sundays through Wednesdays during hours of operation and hours of alcohol service

The Town's Alcohol Policy requires the following findings for alcohol service past 10:00 PM:

- 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.

The applicant has a history of violations and complaints regarding number of seats and alcohol service. They have violated their CUP and the Town's Alcohol Policy on several occasions and continue to advertise as a wine bar.

3. Alcohol Service

Stand Alone Alcohol Service.

The applicant is proposing to serve alcohol without a meal. The applicant explains that they would like to utilize their existing Alcohol Beverage Control (ABC) license to its full extent and serve beer and wine independently from meals. The applicant will continue to offer meals as part of their restaurant. Please see Exhibit D, for the applicant's justification of this proposal.

The Town's Alcohol Policy (Exhibit E) states the following:

- 1. Town shall continue to strongly discourage new applications for stand alone bars or restaurant with separate bars.
- 2. Alcoholic beverages may only be served with meals.

The applicant's proposal for alcohol service without food service is inconsistent with the Town's Alcohol Policy. A restaurant that serves alcohol independently of a meal could potentially operate much like a bar, which is strongly discouraged by the Policy. This aspect of the proposal differs from the approved CUP that the Los Gatos Coffee Roasting Company obtained recently. The Los Gatos Coffee Roasting Company will be serving wine with meals only.

Wine Tasting.

The applicant proposes to operate a wine tasting bar. They would offer one ounce servings at the bar and would not serve food with the tasting. The applicant proposes to offer wine tasting during the allowed hours of alcohol service. Wine tasting is allowed with the approval of a CUP.

Retail Alcohol Sales.

The applicant proposes retail alcohol sales, providing a selection of wine for sale for off-site consumption. The applicant plans to display their wines in a wine rack located near the bar. Café Rouge will focus on locals wine, but would like to have the option to sell imported wines as well. Please see Exhibit D for an explanation of this aspect of the proposal. The Town has received letter from three local wineries in support of the proposal (Exhibit F, G and H). The Los Gatos Coffee Roasting Company's retail sale of wine is part of a small grocery store operation. Another similar retail wine sale operation is Café Marcella, where they have a separate retail wine room to display their wines.

Alcohol Service During Events.

The applicant would like to serve alcohol during their proposed events. These events may include artists' receptions, poetry readings and cultural events. Please see the applicant's justification letter (Exhibit D) for a description. The Town's Alcohol Policy does not specifically regulate events, but entertainment is addressed in the Policy.

Based on the justification letter from the applicant, some of the proposed events are considered entertainment and that aspect of the application is inconsistent with the Town's Alcohol Policy. The Policy states:

1. Town shall continue to discourage applications for entertainment establishments serving alcoholic beverages.
2. Entertainment in association with an eating or drinking establishment may be allowed if standards and a permit process are adopted. (An entertainment permit process has not been adopted)

The CUP for the Los Gatos Coffee Roasting Company requires that no alcohol be served during their events, with the exception of their private holiday party, which is not subject to the Town's Alcohol Policy, but is regulated by the CUP.

4. Traffic

Due to the increase in the number of proposed seats, there will be a net increase of 96.6 Additional Daily Trips (ADT) and 8.4 PM peak hour trips. Uses that generate more than five peak hour trips require that the applicant justify the projects community benefit. The applicant has addressed this issue in the letter of justification (Exhibit D). However, if the increase in seats is not approved, then community benefit is not required. The traffic impact is considered minor according to the Town's Traffic Impact Policy, and a traffic study is not required. The payment of a Traffic Impact Mitigation Fee is required as a condition of approval.

5. Loading Zone and Outdoor Seating Area

The proposed outdoor seating area at the southeast corner of the site is currently a loading area for the entire building. The applicant is requesting that this loading area be removed to allow for the proposed seating area that would be improved with planters to separate the seating area from the public space (Exhibit I).

The existing loading area was installed to serve the merchants at the subject site. It is currently improved with a handicap ramp and a curb behind the sidewalk that serves as a driveway approach. The space is not separated from the sidewalk and the parking lot and pedestrians often walk through this area.

Since the proposal of 40 seats is inconsistent with the Town Code, it is unlikely that this loading space can be converted into a seating area. Therefore, the Planning Commission should consider one of the following options for this area.

- A. Require this space to improved as a landscaped area perhaps with potted plants and safely separated from the sidewalk and parking lot. Restaurant seating will not be allowed in this area.
- B. Require that the loading space be safely separated from the sidewalk and parking lot.

Even though it is unlikely that this loading space can be converted into a seating area, it may be helpful to understand the requirements of outdoor alcohol service. The Town's Alcohol Policy requires that adequate separation be provided between outdoor seating area and public areas when alcohol is served. To comply with the policy, the applicant has proposed to locate planters along the perimeter of the seating area to separate the area from the sidewalk. The design must be approved by the Chief of Police prior to installation. The separation shall clearly suggest that alcohol is not allowed outside the restaurant seating area as determined by the Chief of Police. Any landscaping area will be reviewed and approved by the Director of Public Works to ensure proper separation between the landscaped area, loading zone and pedestrian ramp. The applicant will be available to answer any questions relating to the details of the planters as specifications were not included in the plans.

6. 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.

D. CONCLUSION:

Staff finds that the proposal of 40 seats, service of alcohol without a meal, alcohol service with entertainment and service of alcohol after 10:00 PM are inconsistent with the Town's Alcohol Policy. Staff is concerned with the applicant's history of violations of their CUP, which is inconsistent with the required findings of alcohol service past 10:00 PM. The proposed retail alcohol sales also cause concern as it may change the character of the restaurant. If the Commission is inclined to recommend approval for the wine tasting, it should make the findings as stated in Exhibit A and make a recommendation to the Town Council.

E. RECOMMENDATION:

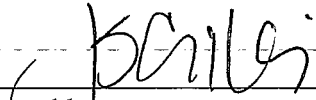
Pursuant to the Town's Alcohol Policy, this matter must be referred to Town Council with a recommendation from the Planning Commission.

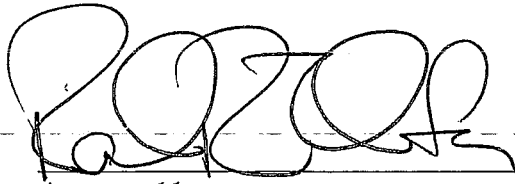
If the Planning Commission finds merit with the proposal, it should:

1. Make the required findings (Exhibit A),
2. Recommend approval of the application to Council, subject to conditions (Exhibit C).

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

1. Recommend approval of the application to Council with additional and/or modified conditions of approval, or
2. Deny the application.


Prepared by:
Judie Gilli, Assistant Planner

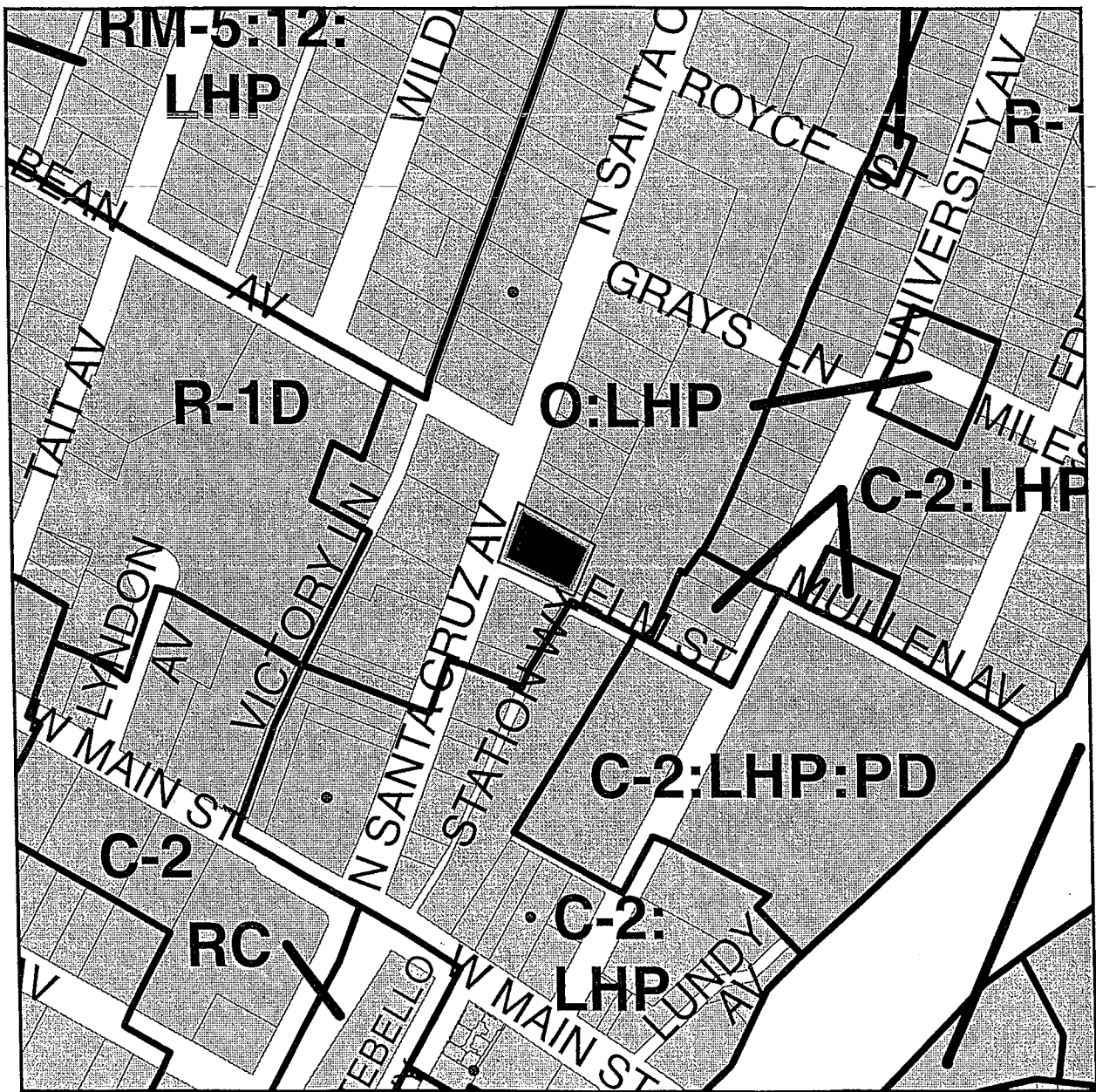

Approved by:
Bud N. Lortz,
Director of Community Development

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cc:

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42 Elm Street



REQUIRED FINDINGS FOR

42 Elm Street

Conditional Use Permit U-06-20

Requesting approval to modify a conditional use permit to increase the seating, allow special events, and wine bar with retail wine sale on property zoned C-2. APN 529-03-035.

PROPERTY OWNER: Michael Cobler

APPLICANT: Belghis and Farhad Proushani

FINDINGS

- As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.
- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
 - (a) 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 uses of the property are essential or desirable to the public convenience or welfare;
 - (2) The proposed uses will not impair the integrity and character of the zone;
 - (3) The proposed uses would not be detrimental to public health, safety or general welfare; and
 - (4) The proposed uses of the property are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.
- The Town's Alcohol Policy requires the following findings for alcohol service past 10:00 PM:
 - 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.
- That the proposed project is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (Section IV.B).

ELM STREET, 42/U-00-26. (00.05)

Requesting approval to modify a conditional use permit to serve beer and wine with meals on property zoned C-2. PROPERTY OWNER: Creamery II Investors LLC. APPLICANT: Farhad and Belghis Proushani. **Continued from October 25, 2000.**

Commissioner Lyon stated that he has listened to the tapes, reviewed the Minutes and is qualified to participate in this matter.

Motion by Chair Bruno, seconded by Commissioner Lyon to approve 42 Elm Street with the following conditions and findings.

CONDITIONS

42 Elm St.

Conditional Use Permit U-00-26

Requesting approval for modification of the Conditional Use Permit to serve beer and wine at the property zoned C-2.

PROPERTY OWNER: Creamery II Investors, LLC

APPLICANT: Farhad and Belghis Proushani

TO THE SATISFACTION OF THE PLANNING DIRECTOR:

(Planning Section)

1. NUMBER OF SEATS. The number of seats shall not exceed 12 total, including both indoor and outdoor seating.
2. HOURS OF ALCOHOLIC BEVERAGE SERVICE. The maximum hours of alcoholic beverage service shall be from 11am-till 11pm seven days a week.
3. HOURS OF OPERATION. The maximum hours of operation shall be from 6:00am to 1:00am seven days a week.
4. HOLD HARMLESS. A hold harmless agreement shall be recorded releasing the Town from any liability relating to the outdoor seating.
5. TAKE OUT. Take out food shall be served in recycled material containers.
6. UTENSILS. All beverages and food served on site shall be served on reusable materials.
7. TRASH. Operators of the restaurant shall pick up trash in the vicinity of the restaurant when outdoor seating is available.
8. 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.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

9. 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).

10. **ALCOHOLIC BEVERAGE SERVICE:** 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.

FINDINGS

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

1. The proposed use of the property is essential or desirable to the public convenience or welfare in that ~~the restaurant will provide an amenity that is both compatible and complimentary with the existing~~ uses in the downtown.
2. The proposed use will not impair the integrity and character of the zone in that the proposed modification is permitted in the zone district.
3. The proposed use would not be detrimental to public health, safety or general welfare in that conditions are being added to regulate the hours of operation and alcoholic beverage service.
4. The proposed uses of the property are in harmony with the various elements or objectives of the general plan and the purposes of the Town code.

As required by Town council Resolution 1994-29 for policies regulating the sale of alcoholic beverages the Commission finds:

1. The applicant does not have a history of complaints.

Carried unanimously.

Conditions of Approval
42 Elm Street
Conditional Use Permit U-06-20
Page 1

RECOMMENDED CONDITIONS OF APPROVAL FOR:

42 Elm Street
Conditional Use Permit U-06-20

Requesting approval to modify a conditional use permit to increase the seating, allow special events, and wine bar with retail wine sale on property zoned C-2. APN 529-03-035.

PROPERTY OWNER: Michael Cobler

APPLICANT: Belghis and Farhad Proushani

TO THE SATISFACTION OF THE PLANNING DIRECTOR:

(Planning Section)

1. **CONDITIONS:** These conditions of approval shall supercede all previously adopted conditions.
2. **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 I 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 or the Planning Commission, depending on the scope of the changes.
3. **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.
4. **USE:** The approved use is a restaurant.
5. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 12 seats, indoor and out.
6. **HOURS OF OPERATION:** Maximum hours of operation for the restaurant shall be 6:00 a.m. to 1:00 a.m. seven days a week. Alcohol service shall be limited to 11:00 AM to 10:00 PM, seven days a week.
7. **ALCOHOL SALES:** The service of wine by the glass for the restaurant is permitted only with meals. 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. Retail sale of alcohol for off-site consumption is not permitted.
8. **WINE TASTING:** Wine tasting is permitted. The maximum sample size for the tasting shall not exceed one ounce.
9. **OUTDOOR AREA:** The design of improvements to the outdoor area must be approved by the Chief of Police and Director of Public Works prior to installation. The Chief Of Police will review the proposal for public safety. The Director of Public Works will review the proposal for proper separation between landscaped areas, loading zone (if it remains) and pedestrian ramp.
10. **HOLD HARMLESS:** A hold harmless agreement shall be recorded releasing the Town from any liability relating to the outdoor seating.
11. **TAKE OUT:** Take out food shall be served in recycled material containers.
12. **UTENSILS:** All beverages and food served on site shall be served on reusable materials.

13. TRASH: Operators of the restaurant shall pick up trash in the vicinity of the restaurant when outdoor seating is available.
 14. SPECIAL EVENTS: Wine tasting lectures, community meetings and private (invitation only) events are allowed. These events are limited to once a month and during hours of operation. Alcohol service and entertainment is not permitted during these events.
 15. PROHIBITED: Service of alcohol without a meal, retail sale of alcohol for off-site consumption, entertainment and outdoor barbeques are not allowed.
-

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

16. 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 conditional use permit is issued. The fee shall be paid within 30-days of issuance of the conditional use permit. The traffic impact mitigation fee for this project, using the current fee schedule and the preliminary plans is \$8,114.40. The final fee shall be calculated from the final plans using the rate schedule in effect at the time the conditional use permit is issued, using a trip generation rate based on high turnover restaurant use. The preliminary fee is based on an increase from 12 seats to 40 seats. The additional 28 seats increase daily average daily traffic by 135.2 trips, and the PM peak hour traffic increases by 11.8 trips.
17. 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.
18. 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.
19. 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).
20. 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.
21. 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.

22. **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.
23. **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 within 30 days of issuance of a certificate of occupancy.
24. **OUTDOOR TRASH ENCLOSURES.** Within 60 days of issuance of a conditional use permit, outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided within the enclosure.
25. **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.
26. **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.

Café Rouge

42 Elm Street
Los Gatos
California
95030

RECEIVED
MAY - 3 2006
TOWN OF LOS GATOS
PLANNING COMMISSION

May 2, 2006

Planning Commission of the Town of Los Gatos
Los Gatos, Ca.

Hand delivered

Ladies and Gentlemen:

Re: Modification to the use permit for Café Rouge

We have owned and operated Café Rouge at the same location in Los Gatos for 11 years now. About six years ago, the Town was kind enough to grant us permission to use our ABC beer and wine license (license #41), although with restrictions limiting that use. The purpose of this letter is to request that the Town withdraw those restrictions. We also ask that the Café be permitted

- to expand to 40 seats, including inside and outside seating;
- to allow our ABC license #41 be fully implemented under its terms, thus permitting us to sell customers a glass of wine or beer without requiring the purchase of food, and permitting us to sell bottles of wine;
- to hold multi-cultural poetry readings and musical events once a month, only from Sunday evening through Wednesday;
- to hold open-mike events once a month, only from Sunday evening through Wednesday;
- to hold wine tasting and wine recognition sessions and classes once a month, only from Sunday evening through Wednesday;
- to impose a cover charge for special events,
- to hold a weekly outside barbeque, only from Sunday evening through Wednesday and
- to rent out its premises to small groups for special occasions, on occasions not more than four times per year.

We are making this request for modification now for a number of reasons. First of all, we have operated the Café for a significant amount of time, and by now we believe the Town is familiar with the type of business operation we maintain. This is our only location. We run it and control it, and we are here every day doing so. Our clientele are not rowdy, and over-indulgence has never been an issue at the Café; our customers tend

to be local residents over the age of 30. However, we also always provide complimentary non-alcoholic drinks to designated drivers.

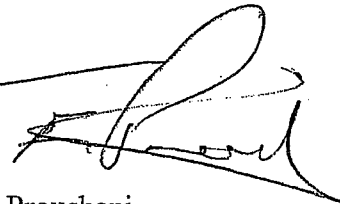
Secondly, about six months ago, we had the idea of specializing in serving wines of the Santa Cruz Mountains each evening. This idea has had some success, and has allowed us to stay in business, but is limited by our number of seats, and the requirement that food be served with the wine. Our idea is about to be further limited by the entry into this niche of the Los Gatos Roasting Company, which is a much larger business than we are. If the Roasting Company is permitted to enter this area, we cannot hope to compete without a change to our business.

The Town seems to be a weekend destination for many people, but by the changes we request to our permit, we hope to be a part of an effort to encourage people to see our Town as a destination for the evenings from Sunday through Wednesday as well. Santana Row is very strong competition for our area. We want to add flavors and values which are unique to Los Gatos. The above requested changes to our use permit will allow Café Rouge to compete, in our small way, with out-of-town, as well as in-town destinations. In the face of what seems to us a very weak, and continuing, economy, these changes to our permit are vital to our continued operation. We ask for your most serious consideration for this request.

If you should have any questions concerning any aspect of our requested changes or the implementation plans for those changes, please contact us at the Café (395-1599) or in person and we will be glad to talk.

Very truly yours,

B. Proushani



Belghis and Farhad Proushani

May 11, 2006

Supplement to the Letter of Justification dated 05/02/06.

Hand delivered

Ladies and Gentlemen:

RECEIVED

MAY 11 2006

TOWN OF LOS GATOS
PLANNING DIVISION

About 40 years ago, a total of 15 parking spot were assigned to the retail stores in this building.

16 years ago, the status of 42 Elm Street, which was retail, changed to a restaurant.

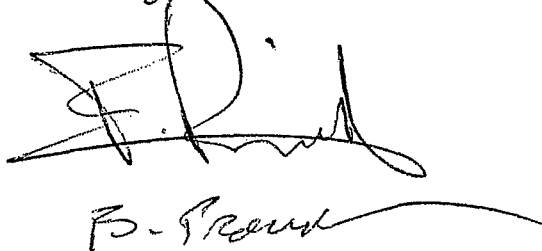
Therefore we would like to request the town to consider increasing the parking spaces assigned to Cafe Rouge, as the need of the business requires additional seating.

Besides, according to the owners of the exclusive retail stores, in this location, they are not a destination for high traffic volume.

Furthermore, over one year ago, we lost our access to our loading space, due to the fact that the town constructed a handicap ramp (please refer to attached plans and pictures). Therefore we would like to request the permit to alter this space, for additional seating to capture the panoramic scene of the beautiful Santa Cruz Mountains hills.

Very Truly Yours

Belghis and Farhad Proushani



The image shows a handwritten signature in black ink. The signature is stylized and appears to be a combination of the names 'Belghis' and 'Farhad'. Below the main signature, there is a smaller, more legible signature that reads 'B. Proushani'.

May 18th 2006

Supplement to the letter of justification dated 5/2/06

Hand Delivered

Ladies and Gentlemen:

RECEIVED

MAY 18 2006

TOWN OF LOS GATOS
PLANNING DIVISION

As of 1995 we had approximately 40 seats in our cafe, inside and outside. We reduced the number of the seats to 12 prior to submitting our application for conditional use permit. The cafe looks empty with the impression that the place is closing and we are loosing business. Tables, chairs and umbrellas are the first impression, which attracts people to an eating place. 90% of our business is supported by foot traffic, if for any reason town is not busy we almost have no business. To legalize the increase of number of our seat will not have any effect on the traffic since we had the experience for the last ten years. The fact is that 16 years ago, conditional use for 42 Elm Street changed from a retail store to a restaurant with no consideration of the need of the extra parking spaces. There are 15 parking spaces available for our building, the exclusive shops in this building are not a destination of a high volume traffic in the town, we believe with discretion of the town management the allowance for the only eating place in this building could be reviewed and altered to the needs of the cafe, which is 40 seats. Also the cafe could use other shops allowances after the closing hour (6 p.m. daily).

To implement our beer and wine license # 41 fully

Since year 2000 we have been serving beer and wine with no complaints, no disturbance and no nuisance violations. We will have food available during our business hours and will encourage our customers to purchase food with their drinks, but we should not force them to do so, specially before and after the eating hours when they come late afternoon or early evening for a glass of wine or beer, which discourage them to stay or revisit our place in future. As a matter of fact we are forcing our customer with this manner recently. The result is that we are loosing business and we are receiving lots of complaints and negative comments about our business and our town.

Wine tasting and wine recognition classes are vital to promote the sale and appreciation of the community to the magnificent quality of the Santa Cruz Mountains wines which has been our line of business since December 2005.

Our effort has been to operate a cultural cafe since 1993. By promoting local artists, art exhibitions, local musicians and poetry reading. Also to explore other minority's culture of poetry, music and art through special events. This is what we have done and would like to improve further. We see cultural events different than entertainment. Serving wine during cultural events or the artist's receptions, is a complement to relaxation and enjoyment...different than serving wine in the bar which could encourage otherwise (other than wisdom)

To impose a cover charge during special events, is something that comfort and Practicality for holding these events.

Occasional BBQ is something new and happy events that because of our location being at The side of the parking lot not in main street, gives this opportunity to bring some joy and Add some flavor into the town.

To have our space available for some special events to small group is affordable and appreciated by the community and the visitors of the town. The cafe is very European and unique place (One of the kind in the area).

The hour of our business would be within of our permit as is required.

We try to carry on with our events during the days and times that town is quiet anyway (Sunday through Wednesday), which has no effect on high traffic.

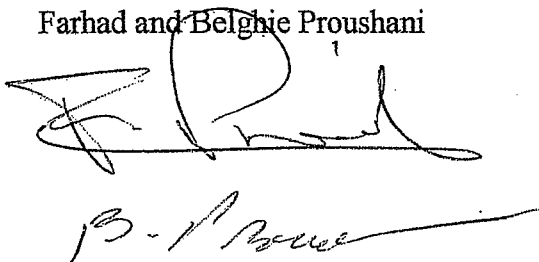
We have been struggling to do business in the town for the last 11 years, last three years We have been in business on borrowed money. Our determination of serving the Community and the visitors of the town is so strong that as an qualified architect, fashion Designer and stylist, we still have a vision of success in working with public by serving and promoting cultural events. We believe with the town management, positive consideration and discretion, we will be able to stay in business and walk the path of success and keep the spirit of Los Gatos up.

Finally...

We strongly believe that our loading area, is not safe and sound after the town constructed the handicap ramp. Therefore we suggest to use this space for seating that is the best and the only location in the town with the view of the beautiful Los Gatos Hills that surrounds our unique town and give a chance to the community and the visitors to capture the view of the hills that are bedding the wineries which we serve their wine in our cafe. If the town decides otherwise, cafe rouge and the owner of the property would like to sign off liability of any injury if occur in future (by climbing over the disabled ramp to use the space for loading). To confirm our concern about safety in the town, we would like to meet on sight with one of the town's engineer to express our views more clearly and more efficiently.

Very Truly Yours,

Farhad and Belghe Proushani

The block contains two handwritten signatures. The top signature is a stylized, cursive signature that appears to be 'Farhad'. The bottom signature is also cursive and appears to be 'Belghe Proushani'.

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.

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.

Los
Gatos
Wine
Company

May 2, 2006

Los Gatos Town Council

RECEIVED
MAY - 5 2006
TOWN OF LOS GATOS
PLANNING DIVISION

Dear Friends,

My company, Los Gatos Wine Company, is a newly established business in Los Gatos. I just began selling my product last month, and Michael Funari at Café Rouge was one of the first wine merchants to offer my premium wines to the public.

Since I am a new winemaker in the area, local wine merchants are the best way to introduce my wines. And since I am located in Los Gatos, Café Rouge is among the best places to feature my wine for sale.

Café Rouge is not a typical bar or beer joint, but a classy place to enjoy a glass of locally produced wine, or to discover a bottle that is not available elsewhere. It's a great place to go after a movie or a nice dinner downtown.

It is so hard for the independent business person to succeed, and they need all the support they can get. Please support what Michael is doing.

Sincerely,



Frank Ashton

Ahlgren Vineyard
 Alexander Cellars
 Alfaro Family Vineyards & Winery
 Andersen Vineyards
 Aptos Vineyard
 Aptos Creek Vineyard
 ARGETTO Winery
 Beauregard Vineyards
 Big Basin Vineyard
 Bonny Doon Vineyard
 Burrell School Vineyards
 Byington Winery & Vineyard
 Chaine d'Or Vineyards
 Chinnabar Vineyards & Winery
 Los LaChance Wines
 Los Tita
 Cooper-Garrod Vineyards
 Gordon Creek
 David Bruce Winery
 Guinox
 Hillom Ranch Vineyards
 Ironwood Cellars
 James Jenkins Vineyards
 Jerosa Winery
 Kenwood Oaks Winery
 Kilcrest Vineyards
 Lister Hill Vineyard & Winery
 Lethyn Kennedy Winery
 Lings Mountain Winery
 Rusticana Vineyards
 Ma Prieta Winery
 Men & Jocelyn Wines
 Martin Ranch Winery
 Henry Vineyard
 Michael Martella Wines
 Mount Eden Vineyards
 Piccigrosso Vineyards
 Sal Vineyard
 Schmitt Vineyards
 Shuster Winery
 Organic Wine Works
 Scalis
 M Staiger
 Se Mill Winery
 Scan Ranch Winery
 Shetti Winery
 Shier Winery
 Sze Vineyards
 Str Run Vintners
 Tendon-Smith Winery
 Tendre Wine Cellars
 The Cruz Mtn Vineyard
 The Cruz Vineyard
 Tannah-Chanelle Vineyards
 The Mountain Vineyards
 Trel Vineyards
 Tress Winery
 Trossa Vineyards
 Trossa Mountain Winery
 Trossa Fogarty Winery & Vineyards
 Trossa Mountain
 Trossa Vineyards
 Trossa Gulch Vineyards
 Trossa Oaks Vineyards & Winery
 Trossa Vineyards
 Trossa Vineyards



Santa Cruz Mountains

WINEGROWERS ASSOCIATION

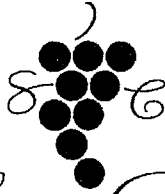
Award of Merit

Café Rouge has received this Award of Merit for a Wine Selection that features wines of the Santa Cruz Mountains.

The Santa Cruz Mountains wine grape growing district extends from Half Moon Bay in the north to Mount Madonna in the south and includes over 40 wineries in three counties.

In the late eighteen hundreds, wines produced from Santa Cruz Mountains grapes were famous for their quality and were winning medals in Europe. Grapes grown in the cooler climates and rugged soils of the coastal mountains grow more slowly and in smaller quantities. This leads to more concentrated flavors and complex character. Today, local winemakers are handcrafting spectacular wines and are again winning international acclaim.

We are pleased to reward this store for their efforts to bring you these unique and limited availability wines. We hope you will treat yourself to the experience of the fine wines of the Santa Cruz Mountains.



Santa Cruz Mountains
WINEGROWERS ASSOCIATION

RECEIVED

MAY - 8 2006

TOWN OF LOS GATOS
PLANNING DIVISION

Town of Los Gatos Civic Center
Los Gatos Planning Department
110 E. Main Street
Los Gatos, CA 95031

CC: Mike Funari
Café Rouge

Dear Town of Los Gatos,

We would like to commend a wonderful restaurant in your area, Café Rouge. Café Rouge is doing a wonderful job of promoting the Santa Cruz Mountains Wines to locals and to visitors. We have sent many visitors to Café Rouge to enjoy our local wines, and they have loved the experience, and the wonderful town of Los Gatos, which is of course the gateway to the Santa Cruz Mountains wine-growing region.

Thank You,

Karen and John Hibble
Karen and John Hibble
Executive Directors

Santa Cruz Mountains Winegrowers Association

SANTA CRUZ MOUNTAIN WINES



Café Rouge

BEGINNING DECEMBER 1ST, 2005
CAFÉ ROUGE WILL BE
SERVING LOCAL SANTA CRUZ
MOUNTAIN WINES
AFTER 5PM

COME AND ENJOY!

NEWS

tudents stage 'die-in' in support of clemency

BY MEL VELTON
STAFF WRITER

A group of Stanford University students lay to rest a "die-in" on a central part of campus today to rally in favor of clemency for gang founder Stanley Tookie Williams. Lawyers argued their case in front of a judge, but the judge ruled against them. The judge said the case was not expected to issue a decision yesterday regarding the possibility of clemency for Williams, 51, who is scheduled to die Tuesday by lethal injection. Members of the Stanford chapter of the National Association for the Advancement of Colored People and other students held an ongoing rally by the clock tower on campus. In numerous bicyclists and pedestrians were blocked at the intersection. Students lay on the pavement in black as part of the die-in. "We're trying to show a unified front," said President Kiah Williams. "We're forcing those who may be apathetic to be passionate."

'We're trying to show a unified front. We're forcing those who may be apathetic to be passionate.'

NAACP chapter President Kiah Williams

The group was seeking to drum up support for clemency for Williams, who was convicted of four 1979 robbery-murders but turned to writing books on death row, publications that preached peace and are tailored toward kids at risk of joining gangs. Monique Jones, an 18-year-old freshman, said that the Stanford group's message was relevant even if the campus stands a far stretch from most inner-city areas. "At a university like this, a lot of people have connections to people who are in power and can effect change," he said.

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ALASKA	299	ALASKA	299	ALASKA	299	ALASKA	299	ALASKA	299
ARIZONA	199	ARIZONA	199	ARIZONA	199	ARIZONA	199	ARIZONA	199
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Los Gatos Tire & Automotive

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Cafe • Rouge

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Enacted 10/1/04

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Volunteer ombudsmen needed for program to aid the elderly

Cordle says program offers 'personal reward'

By JENNIFER McLAIN

Nolan Cordle spent 35 years in the business world. The retiree says nothing comes to the rewarding feeling he gets as a volunteer ombudsman.

"When a person does volunteer work, there is a direct benefit. The personal reward is something that you don't get out of a regular paying job," the Los Gatos resident says.

The ombudsman concept originated in Sweden in 1909. This program is designed to give a voice to residents of long-term care facilities, he says. In California, the wards investigate complaints, ranging from abuse to disapproval about food, by elderly residents of registered nursing facilities.

In 1965, the program was embraced in the United States as part of the Older American Act. The long-term care ombudsman program in California has state mandates. It requires that residents be responsible for receiving reports of alleged dependent adult abuse in adult dental care facilities, and for witness-advanced health-care directives for residents in nursing facilities. Last year, the ombudsman program investigated 1,902 adult complaints in California.

Cordle says he joined the program two years ago after hearing about it in church. He

participated in three-month training program covering issues such as how to identify elder abuse, how it affects the elderly and how to protect the rights of seniors.

Each volunteer is assigned care facilities throughout the county. Cordle has two facilities that he frequents two or three times a week.

When he gets there, he makes his rounds, introducing himself to the new arrivals, and then he visits with the other residents to see if there are any concerns or complaints about their care.

One thing ombudsmen have to remember, he says, is that the volunteers should be objective.

While they should develop a rapport with the residents, they should not do so in a way that would impair their judgment.

The program is essential in Santa Clara County, and Cordle says that there is a need for more volunteers. The volunteers are as old as 85, and have backgrounds in such professions as teaching, medicine and business.

In Santa Clara County, there are more than 12,600 residents in 55 nursing facilities and more than 350 residential care and assisted living facilities. For all of the residents, however, there are only 25 volunteers.

"I can't stress enough how important it is that we get more volunteers," Cordle says.

After volunteers complete the 36-hour training program, Cordle hopes that they can donate at least 20 hours a month to the program.

To learn more, contact Nolan Cordle at 408.325.5151.

POLICE REPORT

Theft—Feb. 5, 4:21 p.m. Someone took a ring of jewelry from a home on Johnson Avenue. The victim was out of the county at the time, and the resident's daughter reported the house. The jewelry was valued at between \$5,000 and \$10,000.

Theft—Feb. 2, 3:13 p.m. A juvenile was arrested on N. Santa Cruz Avenue driving a chrome valve-stem cover from a car. The juvenile was detained, cited and released to a relative.

Drunk in public—Feb. 4, 7:07 p.m. A man was arrested for being drunk in public on N. Santa Cruz Avenue. While driving him, officers located marijuana in the car. He was booked into jail.

Auto theft—Feb. 5, 10:05 a.m. An unknown female stole a car from Carlton Avenue.

Drunk driving—Feb. 4, 1:14 a.m. Officers conducted an enforcement stop of a VW parked on N. Santa Cruz Avenue. The driver was found to be under the influence of an alcoholic beverage. She was taken into custody without incident and booked into Santa Clara County Main Jail.

Narcotics—Feb. 5, 9:51 a.m. Upon a traffic stop on Capri Drive, a female adult was found to be unlicensed and under the influence of methamphetamine. A pipe and marijuana were found. She was arrested and booked into Santa Clara County Main Jail.

Drunken driving—Feb. 4, 5:22 a.m. An adult male was arrested for drunken driving after being pulled over on W. Main Street.

Reckless driving—Feb. 6, 1:05 a.m. A male juvenile driver was seen driving through a red light at a high rate of speed. The juvenile sped through a residential area and parking lots with several witnesses present. He was cited for reckless driving and released.

Petty theft—Feb. 4, 12:08 a.m. A juvenile was detained after stealing breath mints from a store. The store employee recovered the stolen merchandise. The juvenile was released to his mother for petty theft, possession of less than one ounce of marijuana and being a minor in possession of tobacco products.

Assault with a deadly weapon—Feb. 2, 5:34 p.m. An adult male stabbed a person in the neck on Blossom Hill Road. The male was arrested and booked at Santa Clara County Main Jail.

Narcotics—Feb. 2, 10:47 a.m. Three juveniles were found to be in possession of marijuana. They were all cited and released.

Theft—Feb. 1, 7:07 p.m. A woman contacted an officer on N. Santa Cruz Avenue to make a theft report. She told the officer that her shoes and car keys were stolen. The officer did not locate the stolen items.

Burglary—Feb. 1, 1:02 p.m. An unknown person entered an office located on Pollard Road and stole multiple computers.

Café Rouge

FEATURING LOCAL SANTA CRUZ MOUNTAINS WINES

Los Gatos Dining Room
N. SANTA CRUZ AVE.
Downtown Los Gatos

EVENING WINE BAR

Vinery of the Week • River Run
Meet the Maker — February 18th @ 9:00 p.m.
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Conveniently located close to parking

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Create a chic look with custom window coverings from Budget Blinds®!




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www.budgetblinds.com

Muccigrosso Vineyards
21450 Bear Creek Road
Los Gatos, CA 95033
408-354-0821

May 4, 2006

RECEIVED

MAY - 5 2006

Town of Los Gatos Civic Center
Los Gatos Planning Department
110 E. Main Street
Los Gatos, CA 95031

TOWN OF LOS GATOS
PLANNING DIVISION

Attn: Los Gatos Planning Commission

Re: Café Rouge
Conditional Use Permit Modification Application

Dear Gentilepersons:

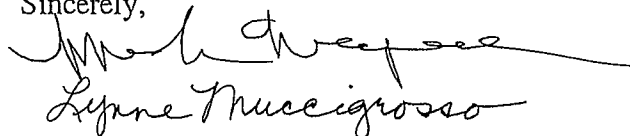
As one of the many small wineries in the Santa Cruz Mountains, we are writing on behalf of Café Rouge. We are long-time Los Gatos residents (over 28 years), and we have been thrilled that our town has finally brought a wine bar to reality! Café Rouge is a comfortable, friendly place where local wine enthusiasts have an opportunity to try wines from a number of local wineries like ours. Many of us, as small wineries, have limited public exposure, and we have been more than pleased to have our wines featured at Café Rouge.

It has been delightful to watch Café Rouge become a popular place for people to come and enjoy a glass of wine before and after dinner at one of the local restaurants, or before or after a movie at the Los Gatos Cinema (walking distance).

As mountain residents, it has provided a place *in town* for us to meet with friends and family, and to connect with other wine lovers. Our wine sales have increased during the past five months, and we believe this is, in part, due to the fine exposure Café Rouge affords our wines.

There are many small, congenial wine bars in other Bay Area communities. We are thrilled that Café Rouge has filled that glaring gap in Los Gatos! We very much hope to see this establishment continue to grow and flourish!

Sincerely,



Michael and Lynne Muccigrosso
Muccigrosso Vineyards

**MAP AVAILABLE IN
CLERK DEPARTMENT**

Date: June 28, 2006
For Agenda Of: June 28, 2006
Agenda Item: 3

DESK ITEM

REPORT TO: The Planning Commission
FROM: The Development Review Committee
LOCATION: 42 Elm Street
Conditional Use Permit U-06-20

Requesting approval to modify a conditional use permit to increase the seating, allow special events, and wine bar with retail wine sale on property zoned C-2.

APN 529-03-035.

PROPERTY OWNER: Michael Cobler

APPLICANT: Belghis and Farhad Proushani

DEEMED COMPLETE: May 18, 2006

FINAL DATE TO TAKE ACTION BY: November 18, 2006

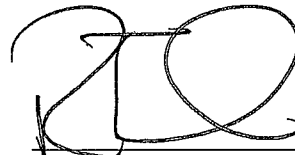
EXHIBITS: A.-I. Previously submitted
J. Petitions from concerned citizens, received June 27, 2006 (5 pages)
K. Letter from Larry Justo Arzie, received June 27, 2006 (1 page)
L. Applicant's response to staff report, received June 27, 2006 (2 pages)

DISCUSSION:

Exhibits J, K, and L were received after the staff report was finalized.



Prepared by:
Judie Gilli, Assistant Planner



Approved by:
Bud N. Lortz,
Director of Community Development

BNL:RT:JG:

cc:

To Whom It May Concern

In front of Cafe Rouge on the location of disabled ramp and loading area, I
tipped over the curb.

Name: RUTH SCHAFER

Date: 05-31-06

Phone: (821) 427-0244

To Whom It May Concern

In front of Cafe Rouge on the location of disabled ramp and loading area, I
tipped over the curb.

Name: PETER D. CAYLOR MD

Date: 5/31/06

Phone: 408 656 0904

I ACTUALLY TRIPPED
AT 10 P.M. AND SUFFERED
A MILD ANKLE SPRAIN

~~Thank you~~

PC

To Whom It May Concern

In front of Cafe Rouge on the location of disabled ramp and loading area, I
tipped over the curb.

Name: Heidi Schaffer

Date: 31 May 06

Phone: 831-466-0949

To Whom It May Concern

In front of Cafe Rouge on the location of disabled ramp and loading area, I
tipped over the curb.

Name: M. Crasso

Date: 28 May

Phone: 867-9977

To Whom It May Concern

In front of Cafe Rouge on the location of disabled ramp and loading area, I
tipped over the curb.

Name: R. Hanson

Date: 28 Ma

Phone:

>>> "Justo Hernandez" <justohernandez@earthlink.net> 06/27/2006 12:16:19 PM >>>

RE: 42 ELM STREET. APPLICATION U-06-20

It is seldom that we are able to rectify past planning errors. The history of this applicant would clearly justify revoking thier beer and wine license, instead of rewarding them with more seating and a serve alone winebar.

Larry Justo Arzie

Café Rouge

42 Elm Street
Los Gatos
California
95030

June 27, 2006

Planning Commission of the Town of Los Gatos
Los Gatos, Ca.

RECEIVED

JUN 27 2006

TOWN OF LOS GATOS
PLANNING DIVISION

Hand delivered

Ladies and Gentlemen:

Re: Report of Planning Staff to Modification to Café Rouge Use Permit

We have received the Planning Staff Report to our request for modification to our use permit. There are a number of allegations in that report which we feel we must address.

First of all, the complaints noted by the staff: when the staff contacted us about not using the loading zone for seating and keeping it clear, we did remove seats from that area, while also alerting the Town to the safety hazard which the loading zone represents for it. (We have provided the Commission copies of the complaints of individuals who have come into the Café to complain about this hazard just after the Town required that we remove the large planter boxes which we had placed to ameliorate that hazard.)

The second complaint noted by staff concerns the Town Code Compliance Officer advising the Café that wine tasting is against their CUP. Farhad had the conversation with the Code Compliance Officer. The officer asked is there were any wine tastings occurring in the Café. Farhad said that there is certainly no free alcohol, if that is what he meant. Patrons do taste wine, because we sell it by the glass with food, and Farhad understood that sometimes our partner Mike Funari sells wine by the flight, so that an individual can try more than one with their food. The officer was satisfied, we thought, that we were not in violation of our CUP.

The third complaint consisted of individuals reporting that the Café was selling wine without food, and that the Café was selling wine for off-site consumption. The café does not and has not sold wine without food, although it sometimes happens that patrons linger over their wine when the food dishes have been removed from the table. That could give the impression of a violation, when none occurred. As to the sale of wine for off-site consumption, we did consult the terms of our ABC license when Mr. Funari wanted to do that, and learned that it was permitted under our license. We did forget about the restriction in our operating permit from the Town, but immediately ceased

selling wine for off-site consumption when staff reminded us of that provision. We apologize for this very unintentional violation of our existing permit.

As you can see by our plan, we proposed to comply with the Town regulations concerning outside seating, which will be well marked off and separate from the public sidewalk. The planned outside seating will also solve an existing liability problem for the town concerning the dangerous "loading zone" area. The town engineer has recently reported to the town that the "loading zone" area is not suitable for that use. Forty seats is not unduly crowded, and has been approved by the health, fire and police departments.

The staff report recommended decreasing the hours of operation of the alcohol sales from our existing CUP, which is 11:00am to 11:00 pm, to 11:00 am to 10:00 pm. The staff also recommended that we be no longer permitted to serve beer and wine in the patio, where we are now permitted by our CUP to serve it, and where a good part of our business is done.

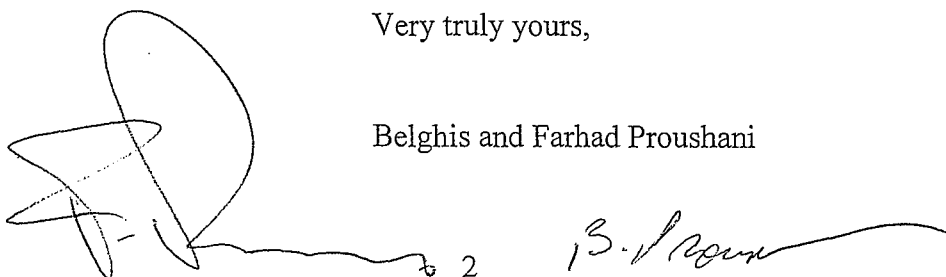
The staff recommended permitting no off-site sales, on the theory that our business is different from the Coffee Roasting Company in that they sell "grocery" items, and from Café Marcella, where there is a separate room for wine sales. But we don't think that a "one size fits all" rule works. We want to be different from Café Marcella in that we want the patrons to be able to buy the wine they just tasted, and see it displayed in the same room. We want to be different from Coffee Roasting Company in we are a much smaller operation. Our clientele is different. Sometimes one is not hungry, but just would like a glass of wine in a quiet place. We do not want to require our patrons to buy food; they do not understand that it is a requirement of the Town and not our own. At the meeting, our partner Mike Funari will have a compilation of all the other wine bars in surrounding communities which do not require food be served with wine.

We started the emphasis on Santa Cruz Mountain Wineries on December 1, 2005 with a six month understanding with our partner Mike Funari. We agreed that if there seemed to be community interest in the idea, at the end of the six months we would go to the town to modify our CUP to permit that aspect of the business to grow it its fullest potential. Apparently the Coffee Roasting Company knew a good idea when they saw one, and has gotten their own permit to sell wine off-site and have wine tastings of Santa Cruz Mountain Wineries. But we think that the Town is big enough for two venues emphasizing wines of the Santa Cruz Mountains. However, we cannot compete with the Coffee Roasting Company without changes to our CUP to permit off site sales, wine without food, and much more seating.

We will be sharing our vision of the new café at the meeting on Wednesday night, plus some other points which we think are pertinent to your deliberations on this matter.

Very truly yours,

Belghis and Farhad Proushani

The block contains two handwritten signatures. The signature on the left is a large, stylized, cursive signature, possibly of Belghis Proushani, followed by a small number '2'. The signature on the right is a smaller, more fluid cursive signature, likely of Farhad Proushani.

REQUIRED FINDINGS FOR

42 Elm Street

Conditional Use Permit U-06-20

Requesting approval to modify a conditional use permit to increase the seating, allow special events, and wine bar with retail wine sale on property zoned C-2. APN 529-03-035.

PROPERTY OWNER: Michael Cobler

APPLICANT: Belghis and Farhad Proushani

FINDINGS

- As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.
- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
 - (a) 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 uses of the property are essential or desirable to the public convenience or welfare;
 - (2) The proposed uses will not impair the integrity and character of the zone;
 - (3) The proposed uses would not be detrimental to public health, safety or general welfare; and
 - (4) The proposed uses of the property are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.
- That the proposed project is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (Section IV.B).

RECOMMENDED CONDITIONS OF APPROVAL FOR:

42 Elm Street

Conditional Use Permit U-06-20

Requesting approval to modify a conditional use permit to increase the seating, allow special events,

and wine bar with retail wine sale on property zoned C-2. APN 529-03-035.

PROPERTY OWNER: Michael Cobler

APPLICANT: Belghis and Farhad Proushani

TO THE SATISFACTION OF THE COMMUNITY DEVELOPMENT DIRECTOR:

(Planning Section)

1. **CONDITIONS:** These conditions of approval shall supercede all previously adopted conditions.
2. **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 I 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 or the Planning Commission, depending on the scope of the changes.
3. **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.
4. **USE:** The approved use is a high turnover (sit-down) restaurant as defined by the Zoning Ordinance.
5. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 12 seats total (indoor and outdoor).
6. **HOURS OF OPERATION:** Hours of operation for the restaurant shall be 6:00 a.m. to 1:00 a.m. seven days a week. Alcohol service and retail alcohol sales shall be limited to 11:00 AM to 10:00 PM, seven days a week.
7. **ALCOHOL SALES:** The service of wine by the glass for the restaurant is permitted, indoors and outdoors, only with meals. 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. Retail sale of wine for off-site consumption is permitted from 11:00 AM to 10:00 PM, seven days a week.
8. **WINE TASTING:** Wine tasting is permitted indoors only. The maximum sample size for the tasting shall not exceed one ounce.
9. **OUTDOOR AREA:** The design of improvements to the outdoor area must be approved by the Chief of Police, the Community Development Director, and Director of Public Works prior to installation. The Chief of Police will review the proposal for public safety. The Director of Public Works will review the proposal for landscaping, proper separation between landscaped areas, loading zone and pedestrian ramp.
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. **SPECIAL EVENTS:** Wine tasting lectures, community meetings and private (invitation only) events are allowed. These events are limited to once a month and during hours of operation. Alcohol service and entertainment is not permitted during these events.

14. PROHIBITED USES: Service of alcohol without a meal and outdoor barbeques are not allowed.

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

15. 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).
16. 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.
17. OUTDOOR TRASH ENCLOSURES. Within 60 days of issuance of a conditional use permit, outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided within the enclosure.
18. 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.
19. 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.

Cafe Rouge
42 Elm Street, Los Gatos Ca. 95030
July 17, 2006

Mayor and Council Members
Town of Los Gatos
P.O. Box 949
Los Gatos, Ca. 95030

RECEIVED

JUL 20 2006

TOWN OF LOS GATOS
PLANNING DIVISION

Ladies and Gentlemen,

With our great appreciation to the Town of Los Gatos Planning Commission decision, and our utmost faith and trust to Madam Mayor and Council Members Town of Los Gatos, for final consideration and decision, we would like to state a few facts, which will determine our success of doing business in the town.

Cafe Rouge for the past 6 years has operated with license to serve beer and wine. We have a great reputation in the town of Los Gatos, and would like to ask the Town to grant us permission to serve beer and wine without the enforced purchase of food items. However, our menu is designed, and priced carefully, in order to encourage our clientele to purchase food. Of course the food service would be available throughout the hours of operation.

Cafe Rouge is not a place to go to see, or to be seen. Cafe Rouge attracts a quieter crowd, sometimes, an older clientele. Our customers enjoy conversation that goes with sharing a drink and ideas in a quiet place, before or after a movie, or perhaps, before or after eating times. This permit would greatly add to the sophisticated, and thoughtful, make-up of down town Los Gatos. Cafe Rouge is a small, and personal, cafe not a chain or franchise. We would like to think that Cafe Rouge is part of the charm of Los Gatos.

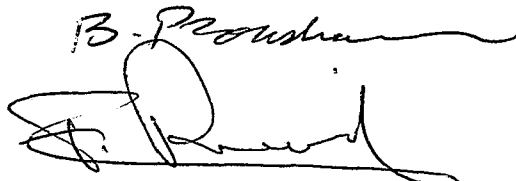
To use the cafe more efficiently to serve our customers, we need to expand our seating to a total 40, inside and out (seating for 40 has already been approved by the Fire, Health and Police Departments). Please see attached proposal plan of the outside area, which was formerly a loading area before the town constructed the handicap ramp.

Finally, Cafe Rouge is a place where Espresso and Wine share the same space, the same customers and the same services. Within the discretion of Madame Mayor, and Council Members Town of Los Gatos, we request to be allowed to use our ABC #41 license with no restrictions, for at least, a period of one-year on a trial basis. If this privilege brings anything other than adding to the charm, and services in the town, our permit could be restricted again according to town policies.

We appreciate your consideration of our request, and would be happy to welcome you to Cafe Rouge at any time.

Very Truly Yours,

Belghis and Farhad Proushani

The block contains two handwritten signatures. The first signature, in dark ink, appears to read 'B. Proushani' and is written in a cursive, flowing style. Below it, a second signature is written in a lighter, more stylized cursive script, possibly representing 'Farhad Proushani'.

in keeping with Los Gatos town's alcohol policy and in concert with tradition of France, Spain, and Italy, which considers wine as inseparable from food, we are pleased to offer the following plates from our menu.

assiette de fromage \$6.50
cheese plate

assorted cheese, olives and mustard, and French baguette

assiette de fromage et salmon \$6.50
cheese and salmon plate

assorted cheeses and wild salmon, olives and French baguette

assiette de charcuterie \$6.50
charcuterie plate

combination of assorted cured meats accompanied by whole grain mustard and French baguette

pasta/quiche of the day \$6.50

homemade quiche or pasta served with baby green salad and vinaigrette dressing

Cafe Rouge
42 Elm Street, Los Gatos CA 95030
July 21, 2006

Mayor and Council Members
Town of Los Gatos
P.O. Box 949
Los Gatos, Ca. 95030

RECEIVED

JUL 21 2006

TOWN OF LOS GATOS
PLANNING DIVISION

Ladies and Gentlemen,

The present terminology in our recommended conditions of approval for our CUP is very different to the one for Coffee Roasting Co. We would feel more justified if you please consider the changes of the wording as below:

- 4- USE: The approved use is a coffee shop-restaurant , espresso bar and wine bar
- 6- ~~Hours of Operation:~~ Maximum hours of operation for the restaurant shall be 6 a.m. to 1 a.m. 7 days a week. The wine service bar and off-site sales of wine shall be limited to 11 a.m. to 10 p.m., 7 days a week.
- 7- Alcohol Service: The service of the wine by the glass for the restaurant is permitted only with meals. 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. Retail sale of wine for off-site consumption is permitted from 11 a.m. to 10 p.m., 7 days a week. Beer and wine maybe 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 side walk. The barrier or fencing maybe a combination of fencing and shrubbery to equal 3 feet.
- 9- Outdoor Seating Area: (previous loading zone before the town constructed the handicap ramp): The chief of police and director of public works prior to installation must approve the design of improvement to the outdoor seating area. The chief of police will review the proposal for public safety. The director of public works will review the proposal for proper separation between landscape area and pedestrian ramp.
- 14- Special Cultural Events: Wine tasting lectures, community meetings, and private (invitation only) events are allowed. These events are limited to once a month each and during the hours of operation. Wine bar service is not permitted during these events.

The use of this terminology is more likely, to describe the nature of Cafe Rouge. The kind of business we are conducting now and intend to sustain in the future, which is more realistic, prestigious and sophisticated.

Very Truly Yours,

Belghis and Farhad Proushani



RESOLUTION 2006 - 072

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
APPROVING THE REQUEST TO MODIFY A CONDITIONAL USE PERMIT TO
CHANGE THE HOURS OF OPERATION AND ALLOW SPECIAL EVENTS, A
DELICATESSEN, OFF-SITE BEER AND WINE SALES, AND WINE TASTING ON
PROPERTY ZONED C-2.**

APN: 529-01-025

CONDITIONAL USE PERMIT: U-06-12

PROPERTY LOCATION: 91, 101 AND 109 W. MAIN STREET

PROPERTY OWNER: SUE FARWELL

APPLICANT: TERI HOPE

WHEREAS:

1. This matter came before Council for public hearing on June 5, 2006.
2. Council received testimony and documentary evidence from the applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted.
3. The Los Gatos Coffee Roasting Company is located at 109 W. Main Street (Store A), 101 W. Main Street (Store B), and 91 W. Main Street (Store C). Store A was granted a Conditional Use Permit (CUP) on March 12, 1997, which allowed for a Creperie and no additional seating. This CUP is now expired and the store is used by The Los Gatos Coffee Roasting Company as retail space. Store B currently operates under a CUP approved on July 10, 1986 allowing for a restaurant with a maximum of 16 seats. Store C currently operates under a CUP approved on July 23, 1986 allowing the previously approved restaurant to expand into 91 W. Main Street and for the addition of 36 seats. In all, the Los Gatos Coffee Roasting Company is currently allowed a maximum of 52 seats.
4. The approved hours of operation for the Los Gatos Coffee Roasting Company are

as follows: 7:30AM to 6:00PM Monday through Wednesday; 7:30AM to 10:30PM Thursday through Saturday; and 9:30AM to 6:00PM Sundays.

5. Applicant seeks approval to modify its CUP to allow for the operation of a gourmet grocery store and full service delicatessen counter offering sandwiches made to order, bulk meats, cheeses, and other deli items, in its Store A location.

6. Applicant seeks approval to modify its CUP to allow for the sale of off-site beer and wine and for wine tasting. Applicant intends to require patrons to pay for one ounce wine tastes in accordance with Alcohol Beverage Control (ABC) requirements, and to offer pre-packaged snacks. Applicant also intends to require that patrons be served a lunch or dinner meal before being served alcoholic beverages, as required by the Town's Alcohol Policy. Alcohol service would also be restricted during special events held at the Los Gatos Coffee Roasting Company. Special events include events for individuals under 21 years of age, poetry and music weekend evening events, community meetings, and the Los Gatos Coffee Roasting Company's annual events.

7. The applicant also seeks approval to modify its CUP to change the hours of operation. The desired hours of operation are 6:00AM to 10:00PM seven days a week. The wine bar would close at 9:30PM seven days a week.

8. Town Council finds as follows:

a. Pursuant to Town Code section 29.20.190, the proposed use of the property is desirable to the public convenience; will not impair the integrity and character of the zone; would not be detrimental to public health, safety or general welfare; and is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code. Evidence in the record demonstrates that the proposed modification to

the CUP would encourage (1) economic and social activity consistent with a small-scale, small town atmosphere and image, (2) the development and retention of locally-owned stores and shops, (3) the preservation of downtown Los Gatos as the historic center of the Town with goods and services for local residents while maintaining the existing Town identity, environment and commercial viability, (4) the development of a new image and market in the Town as the gateway to the Santa Cruz Mountains wine region, and (5) the provision of a new, attractive and well managed night time gathering place in downtown Los Gatos for local youth.

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

c. The proposed use is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (section IV.B), as evidenced by the staff report prepared for the public hearing on June 5, 2006.

RESOLVED:

A. The Conditions of Approval attached hereto as Exhibit A are hereby adopted as the Conditions of Approval of this permit.

B. The decision constitutes a final administrative decision pursuant to California Code of Civil Procedure section 1094.6 as adopted by Section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by California Code of Civil Procedure section 1094.6, or such shorter time as required by state or federal law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the
Town of Los Gatos, California held on 19th day of June 2006 by the following vote.

COUNCIL MEMBERS:

AYES: Steve Glickman, Joe Pirzynski, Barbara Spector, Mike Wasserman,
Mayor Diane McNutt.

NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED:

Diane McNutt
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST

Mary Lynn D. Smissen

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

CONDITIONS OF APPROVAL FOR:

91, 101 and 109 W. Main Street

Conditional Use Permit U-06-12

Requesting approval to modify a conditional use permit to change the hours of operation, allow special events, deli, off and on- site beer and wine sales and wine bar on property zoned C-2. APN 529-01-025.

PROPERTY OWNER: Sue Farwell

APPLICANT: Teri Hope

TO THE SATISFACTION OF THE PLANNING DIRECTOR:

(Planning Section)

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 L 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 or the Planning Commission, depending on the scope of the changes.
2. **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.
3. **USE:** The approved use is a coffee shop-restaurant, delicatessen, wine bar, and specialty retail. Store A contains the wine bar, deli counter, off-site sales of wine, and specialty grocery/coffee retail uses. Stores B and C contain the espresso bar and coffee shop uses. The use shall be consistent with the description contained in the letter from Teri Hope dated April 21, 2006, attached and incorporated herein as Exhibit A.
4. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 52 seats and 6 seats on the outdoor benches in front of Store B and C. No additional seats will be allowed outside of restaurant.
5. **HOURS OF OPERATION:** Maximum hours of operation for the restaurant shall be 6:00 a.m. to 10:00 p.m. seven days a week. The wine service bar will operate from 11:00 a.m. to 9:30 p.m. during normal business hours. Wine bar service not permitted during the following special events: Under 21 Events, Poetry/Music Weekend Events, and Community Meetings.
6. **ALCOHOL SERVICE:** Alcohol service shall be consistent with the description contained in the letter from Teri Hope dated June 1, 2006, attached and incorporated herein as Exhibit B. The service of wine by the glass for the restaurant is permitted only with meals. 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.
7. **WINE TASTING:** Wine tasting is permitted at the wine bar located at the front of Store A as shown on Exhibit L of the report to Planning Commission. No seats are permitted at the wine bar. The maximum sample size for the wine tasting shall not exceed one ounce. Packaged snacks may be served as part of the wine tasting.
8. **SECURABLE BARRIER.** The applicant must install a securable barrier between Store 'A' and Store B as show on Exhibit L to the satisfaction of the Community Development Director. The barrier must be secured during all special events that do not permit the service of alcohol.
9. **LIVE ENTERTAINMENT:** No live entertainment shall be provided during the service of alcohol.

10. SPECIAL EVENTS.

Condition #	Special Event	Event Type
10a.	Events for individuals under 21	A maximum of 12 events per year. Amplified music and open microphone. Alcohol not permitted during hours of scheduled youth group events. Adult supervision provided for each under 21 event. Amplified music shall not go past 9:30 PM Sunday through Thursday. Amplified music shall not go past 10 PM Friday and Saturdays. Under 21 events shall not go past 11PM.
10b.	Poetry/Music Weekend Evening Events	A maximum of 10 events per year. One event per month scheduled on a weekend evening. Poetry and amplified music. Alcohol service not permitted during hours of weekend events. Music shall end at 9:30 PM.
10c.	Community Meetings	Weekly community meetings (including the Los Gatos Art Association Board, co-op nude figure drawing group, and wine appreciation lecture group) held within non-business hours. Music, alcohol, and food service not permitted. Events will not go past 10 PM.
10d.	Los Gatos Roasting Company Annual Events	Two Los Gatos Roasting Company events per year, by invitation only. Amplified music and alcohol permitted. Music shall end at 9:30 PM.

11. WINDOW CURTAINS. Opaque window curtains must be placed in all storefront windows during nude figure drawing classes.

TO THE SATISFACTION OF THE DIRECTOR OF BUILDING & ENGINEERING:

12. TRAFFIC IMPACT MITIGATION FEE. A traffic mitigation fee shall be paid for an

additional 126 ADT prior to the issuance of a Certificate of Use and Occupancy. \$13,008.96 shall be paid within 30-days of Town Council approval of the CUP.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

13. **UNIFORMED SECURITY:** 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.
14. **CONSULTATION AND TRAINING:** 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.
15. **TRAINING MANUAL:** The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
16. **DESIGNATED DRIVER PROGRAM:** The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
17. **POSTING OF TAXICAB TELEPHONE NUMBERS:** Taxicab telephone numbers shall be posted in a visible location.

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

Los Gatos Planning
Commissioners: Phil Micciche, Chair
John Bourgeois
Michael Kane
Tom O'Donnell
Steve Rice
Joanne Talesfore

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
(510) 526-6049

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

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

CHAIR MICCICHE: So the next item is 42 Elm
Street. Requesting approval to modify a conditional use
permit, to increase the seating, allow special events and
wine bar, retail wine sale on property zoned C-2, APN 529-
03-035. Is the applicant here? Has everybody had a chance
to look at the desk item? Excuse, I'm going to take a few
minutes. There was a desk item that came in.

(Pause.)

CHAIR MICCICHE: We're ready? Gentlemen, do we
need more time? If not, please proceed.

FARHAD PROUSHANI: Mr. Chairman, ladies and
gentlemen, good evening. We opened Café Rouge in 1995.
Initially we were simply an espresso bar and we served
specialty coffee. We later added food items. Today, in
addition to a full lunch menu there is always food
available in the café.

In 2000 we secured approval from the Town to sell
beer and wine. Subsequently we were granted an ABC license
that allowed us to sell beer and wine on the premises as

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

1 well as for offsite sale. It also required that food is
2 available during certain hours of operation.

3 We, the owners of the Café Rouge, are extremely
4 shocked with the report of the Town Staff. We have
5 delivered a letter yesterday to speak to that report. I
6 would like address a few more significant errors and
7 inaccuracies contained in the June 22nd report to the
8 Planning Commission.

9 Page #2A: The report makes reference to a March
10 2006 incident in which a code compliance officer visited
11 the café regarding wine tasting. I explained that we do
12 sell wine by the glass, but we do not give wine away. He
13 was unable to explain what he meant by "tasting," and he
14 left saying he was not even sure if this was the right
15 place. I was surprised to even see this included in the
16 report.

17 Page #4, Item #2: This statement seems to be
18 clearly prejudicial. To say we have a history of violations
19 seems a bit extreme. The planner makes reference to four
20 offenses over the past 11 years of our operation. One of
21 these allegation violations was completely false and the
22 validity of the others are certainly debatable, as the
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LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

1 dates of the complaints are coincidentally just before
2 Coffee Roasting Company's CUP meeting.

3 This paragraph also states that we continue to
4 advertise as a wine bar. This statement is also completely
5 false. Our advertising has consisted solely of this poster.
6 As you can see, it says nothing about a wine bar; it simply
7 says we will be serving Santa Cruz Mountains wine beginning
8 December 2005. This makes me wonder what would be
9 inappropriate about advertising as a wine bar. We have
10 beer, we have a bar, we have wine, and a license and a
11 permit to sell it. I called the Los Gatos planning
12 department to obtain the definition of wine bar and they
13 told me they did not have one, or it doesn't exist.

14 We are disregarding our disappointment because of
15 our utmost trust and faith in the cooperative approach of
16 the Town to the applications that are beneficial to the
17 character of the Town of Los Gatos and the community's
18 welfare. Therefore we would like to review our application
19 briefly.
20

21 After three years of poor economy and the opening
22 of Santana Row, Café Rouge, like most of the other
23 businesses in town, has lost almost 50% of its business.
24 Our policy to conduct our business has always been to mind
25

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

1 our own business and to be creative rather than being
2 competitive or adopting the other business's ideas, and
3 keep the diversity in our town, which is essential for its
4 uniqueness.

5 Finally, together with our business partner, Mike
6 Funari, which I'll introduce him in a minute, we came up
7 with a great new idea to serve the wine of our local
8 wineries and entered into this niche of the market in Los
9 Gatos on December 1, 2005. We gave ourselves a period of
10 six months.

11 (Timer goes off.)

12 CHAIR MICCICHE: Excuse me. Could you wrap up,
13 please?

14 FARHAD PROUSHANI: Sure. Fortunately from day one
15 we had good reviews for the wine that we were doing, and we
16 were very successful in what we were doing. Having said
17 that, I think at this point we do not want to complain
18 about the Los Gatos Roasting Company, but even having said
19 that, in the free market economy and a competitive
20 business, there are codes of conduct and morality.

21 I have some photographs, which I was going to
22 show you.
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LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

1 CHAIR MICCICHE: Would you give them to the side
2 here and she can pass those around to us. And recognize
3 that we will be asking questions.

4 FARHAD PROUSHANI: Okay, and there's also a
5 sketch of the area where the seat is.

6 CHAIR MICCICHE: Okay, I'm going to open up. Any
7 questions of the applicant at this point, commissioners?
8 Commissioner Kane? None? Okay, I'm going to ask you to sit
9 down and call the public up, and then I'll bring you back up
10 at the end of that, okay?

11 FARHAD PROUSHANI: I was actually going to ask
12 you to ask my business partner to say a few words also, if
13 you don't mind.

14 CHAIR MICCICHE: Excuse me. We do have a busy
15 night tonight and we have run out of time unfortunately.
16 When you come back up, let's see if the questions can lead
17 to your business partner coming up.

18 FARHAD PROUSHANI: Okay.

19 CHAIR MICCICHE: I do have two speakers on this,
20 a Mr. Selwood.

21 SIMON SELWOOD: Hello, my name is Simon Selwood.
22 I live at 17568 Comanche Trail, Los Gatos. My wife and I
23 have lived in Los Gatos for two years, and one of the first
24 things we thought when we came here was there was no wine
25

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

1 bar. So up until Café Rouge started serving wine we used to
2 go to Saratoga and then Santana Row. So when Café Rouge
3 started serving glasses of wine we thought it was super, we
4 thought it was overdue. I really think there's plenty of
5 places I don't want to go to get a glass of wine in Los
6 Gatos, and this is one of the few places that I do want to
7 go. So I strongly support anything that can be done to
8 expand their license.

9 CHAIR MICCICHE: Thank you very much. Do we have
10 any questions? Excuse me, I might give some advise to the
11 partner. If you'd like to speak in the three minute spot
12 here, if you'd like to fill out one of these cards, we'll
13 give you three minutes up here at the podium. In the
14 meantime I'll call up the second card here. I have a Lynne
15 Muccigrosso.

16 LYNNE MUCCIGROSSO: I am Lynne Muccigrosso. I
17 live at 21450 Bear Creek Road, Los Gatos, have been a
18 resident for 29 years here. All of the small wineries in
19 Los Gatos benefit from Café Rouge's wine bar. Remote,
20 unavailable tasting rooms, of which we are one, have no
21 outlet to offer to the public our wines. So we are very
22 supportive of the serene and friendly atmosphere created at
23 this establishment.
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1 Wine bars are a lovely option to the many bars
2 that are already available here in Los Gatos. There's a
3 different atmosphere, there is a friendly calm feeling
4 about it. It would be a shame to send the happy patrons of
5 the Café Rouge wine bar off to Willow Glen or off to
6 Campbell to find that mellow and comfortable atmosphere. So
7 we are very much in favor of extending their permit. Thank
8 you.

9 CHAIR MICCICHE: Any questions? Are there any
10 more cards? A Mr. Mike Funari.

11 MIKE FUNARI: My name is Mike Funari. I am a
12 lifelong resident of the area. I was born in Santa Clara.
13 I've lived in Los Gatos and currently make my home in
14 Boulder Creek; I have for the past 20 years.

15 My involvement with Santa Cruz Mountain wines and
16 Café Rouge has been a very satisfying experience. Nearly a
17 year ago I began to develop relationships with many of the
18 small wineries in the area, where there are a very small
19 number of wineries that are large.

20 Most of these wineries in the area are quite
21 small, and consequently don't generate an awful lot of
22 revenue. In fact, many of the winery owners have jobs
23 outside the winery. Because of their small size they are
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1 not widely distributed, and consequently not a lot of
2 people get opportunities to experience their wines and
3 ultimately purchase them. Café Rouge is trying to solve
4 this dilemma one customer at a time by serving wine by the
5 glass.

6 I think since these winery owners are so small,
7 many of them are not motivated—as I said, they have jobs
8 outside their wineries—many of them are not motivated by
9 profits as many large commercial wineries are. They have a
10 passion for making wine. Their motivations are to make the
11 best bottle of wine they can, and they are making some
12 phenomenal wines.

13 Customers of Café Rouge tend to be mature
14 professionals that have an appreciation for fine wines.
15 They have a curiosity and an interest in local wines.
16 Moreover, a significant percentage of the patrons of Café
17 Rouge are local neighborhood people. They live within
18 walking distance of the café, and as a matter of fact the
19 café has become sort of a community meeting place. Many
20 people come into the café to enjoy a glass of wine and end
21 up meeting some of their neighbors.

22 The concept of wine bars is neither unique nor
23 particularly new. Uncorked exists in Los Gatos and has for
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1 some time. Wine is available there by the glass and by the
2 bottle. There is no food available. Unwined on Almaden
3 offers wine by the glass and by the bottle. Food is
4 available but not required. Live entertainment is
5 frequently featured. Vintage Wine Bar in Santana Row offers
6 wine by the glass, by the bottle. Food is available but not
7 required. The same is true of Vino Locale in Palo Alto, the
8 Grapevine in Willow Glen, and Soif in Santa Cruz. Within
9 the last month Good Taste has opened in Campbell, and Cava
10 in Capitola.

11 (Timer sounds.)

12 CHAIR MICCICHE: Could you wrap up, please?

13 MIKE FUNARI: Sure. I'll wrap up just by leaving
14 this excerpt from an editorial that appeared in the Los
15 Gatos Weekly Times two weeks ago. It says, "Downtown Los
16 Gatos seems like a natural place to present wines being
17 produced in nearly 70 wineries in the hills above town, 12
18 of them within Los Gatos boundaries. Tasting rooms like the
19 one planned by (inaudible) could give residents and
20 visitors alike a place to become more familiar with wines
21 produced in the area. Councilman Joe Pirzynski called the
22 town 'the gateway to the Santa Cruz Mountain wine country,'
23
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1 and if word gets out, it could make downtown Los Gatos the
2 destination place so many merchants hope it can become."

3 Each night I look out the window of the café to
4 the parking lot adjacent to the café and I see probably
5 close to half the parking spaces... One moment, please.

6 CHAIR MICCICHE: Excuse me. No, I did ask you
7 wrap and we are running long time. I'm sure people may have
8 questions on that. You were saying something about seeing
9 what parking spaces?

10 MIKE FUNARI: Seeing a number of empty parking
11 spaces. The majority of parking spaces actually seem to be
12 empty. If you've walked around town lately you've noticed
13 quite a large number of empty storefronts as well. I
14 believe this commission has a responsibility to act in the
15 best interests of the community and I believe they have an
16 opportunity to do that here tonight by approving this
17 application.

18 CHAIR MICCICHE: Thank you. Any questions of the
19 speaker? Seeing none, thank you very much. Any other
20 speakers on this subject? Seeing none, I'll call the
21 applicant back up for questions from the commission or any
22 other comments you may like to make at this point.

23 FARHAD PROUSHANI: Is there any question for me?
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LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

11

1 CHAIR MICCICHE: Well, why don't you wrap up
2 anything you may want to say?

3 FARHAD PROUSHANI: Okay. Therefore we request to
4 expand our seating to 40 seats. At present we are allowed
5 only 12 seats inside/outside. We request to implement our
6 ABC license 41 to it's full potential. To support our
7 offsite sale we request to carry wine tasting sessions, to
8 expand our outside seating to the area, which is no longer
9 safe and sound to be used as a loading zone.

10 At this point I would like to show you a couple
11 of photographs, which I have already given to you, and a
12 sketch of what our proposal is.

13 That loading zone has become a hazard and a
14 liability for the town. We have added people who have
15 tripped down and fall down and they've ripped their knees on
16 that (inaudible). This is because the town constructed two
17 disabled ramps, one of them right in front of the loading
18 zone. Therefore there is a difference of level of almost one
19 foot to the loading zone. It is not even practical for the
20 lorries to turn into that loading zone.

21 Therefore the engineer of the town actually has
22 come and has told us that this is not a safe place, and they
23 came actually and they gave us a pot of flowers to put in
24 front of the loading zone. And the next morning I come to
25

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

12

1 work and the pot is gone; somebody took it, so there is not
2 even a pot there anymore.

3 So this is the situation. As you see in the
4 sketch, we are trying to safeguard the place, get rid of the
5 liability, and also use this space, which is the best
6 location looking at the hills of Los Gatos.

7 I have nothing else to say.

8 CHAIR MICCICHE: Any questions at this time,
9 Commissioners? None? Okay, thank you. Thank you very much.
10 I'm going to close the public hearing and open it up either
11 to comments, questions of Staff, or a motion. Commissioner
12 Bourgeois.

13 COMMISSIONER BOURGEOIS: I have a question of
14 Staff. Both in the conclusions of the Staff Report as well
15 as in Condition #5, in the conclusion you state you don't
16 find increasing the seating to 40 to be compatible with the
17 town's alcohol policy, which I found a little confusing. And
18 then in Condition #5 you say, shall not exceed 12 seats, but
19 then you go on in Condition #16 to say, you know, if we give
20 them 40 seats they'll have to pay this traffic mitigation
21 fee. So I'm a little confused about Staff's position and the
22 resolution particularly of Condition #5 versus Condition
23 #16.

24 RANDY TSUDA: Well Condition #16 is placed on
25 there as a standard condition utilized by our engineering
department. In the event that the commission approved that

1 number of seats, that's the mitigation that would come into
2 play. It's to give full disclosure to an applicant that that
3 is what he would be obligated to pay should that be
4 approved.

5 COMMISSIONER BOURGEOIS: So whichever direction we
6 go, we're going to have to change one or the other?

7 RANDY TSUDA: No, if you do not approve any
8 increase in seats, then there is no mitigation fee to be
9 paid. That's simply a piece of information that we're
10 providing to the applicant.

11 COMMISSIONER BOURGEOIS: Okay. Thank you.

12 CHAIR MICCICHE: Commissioner Kane.

13 COMMISSIONER KANE: Currently there are 12 seats
14 and the applicant is asking for 40. Does Staff have
15 compromised number in mind that they can live with?

16 RANDY TSUDA: Based on our analysis of the parking
17 situation, it's inconsistent with the parking code. There
18 does not appear to be any grounds for a variance. In this
19 case there's nothing running with the land, there's no
20 unusual circumstance with this property that would appear to
21 meet the findings for a variance.

22 COMMISSIONER KANE: So with 40 seats requested and
23 an \$8,000 fee for that to mitigate what, the negative
24 parking impact? If we went to 20 it would be \$4,000?
25

1 RANDY TSUDA: The fee is associated with the
2 traffic increase. It's not associated directly to the
3 parking.

4 CHAIR MICCICHE: Commissioner O'Donnell.

5 COMMISSIONER O'DONNELL: I listen to this and am
6 very sympathetic and not commenting on the quality of this
7 operation. On the other hand, there doesn't seem to be any
8 leeway on the parking, and I don't see why we can just
9 forget the parking rules.

10 Secondly, we are supposed to observe what the Town
11 Council adopts, and they have a standalone alcohol policy,
12 which flies in the face of this.

13 So I guess the real question I have is what can we
14 do for these people that would be consistent with the town
15 policy? Is there anything of what they're asking us that we
16 can do to help them? But I can tell you this: I for one am
17 not going to say somebody can put in 40 seats when it won't
18 support it, and have standalone alcohol when the town's
19 policy says essentially no. It is not something that I feel
20 I have a lot of discretion on. So I guess what I'm asking
21 my fellow commissioners is whether you agree with that
22 position or not, do you see something in addition to what
23 I'm concerned about that would allow us to give these good
24 people something? I'd like to do that. I'm very sympathetic,
25 but I don't think we have a lot of leeway.

1 CHAIR MICCICHE: Are you asking a question of
2 Staff at this point?

3 COMMISSIONER O'DONNELL: No.

4 CHAIR MICCICHE: Just making a comment. Okay.
5 Commissioner Talesfore.

6 COMMISSIONER TALESFORE: Thank you, Tom. That was
7 well said. And I guess my question with this is it sounds
8 like pretty much a standalone bar, and I don't understand
9 where the food service came in. It wasn't too clear to me. I
10 mean it was like it's there, it's available, but it
11 doesn't... When we approved the Coffee Roasting it was very
12 particular and very specific that the wine would be served
13 only with food, and that is not the case here. I could not
14 even support this for that reason alone. And I'm
15 sympathetic. Maybe they need to come back with another
16 proposal, I don't know.

17 COMMISSIONER BOURGEOIS: But we did approve one-
18 ounce tastes as standalone.

19 RANDY TSUDA: And that is why Staff included that
20 as a condition of approval.

21 COMMISSIONER BOURGEOIS: Right.

22 RANDY TSUDA: That would allow them the one-ounce
23 tastes. However, if you're going to be served full glasses
24 of wine, according to the alcohol policy, that must be
25 served with a meal.

1 COMMISSIONER BOURGEOIS: With a meal, right. So I
2 would be inclined to approve tasting and retail sale for
3 offsite consumption consistent with what we did at the
4 Roasting Company, and then maybe, especially given one of
5 the councilmember's comments that if we do have larger
6 questions we take that offline to Council for direction
7 about standalone glasses of wine.

8 CHAIR MICCICHE: Commissioner Kane.

9 COMMISSIONER KANE: We're not Council members,
10 we're planning commissioners, and we're stuck with our
11 language, as has been said. But we can make recommendations
12 or ask for guidance from Council.

13 There's talk in town, in the chamber, in the
14 mountains, among the residents about destination Los Gatos
15 wineries, and I think what's coming up before us now is an
16 issue regarding changing times. If the alcohol policy was
17 written for a very good reason back when, current
18 circumstances didn't exist, and what we're looking at now is
19 developing the town as a destination wineries, the 70 up in
20 the hills, the 17 that exist in Los Gatos boundaries.

21 So as has been said, we have the authority to go
22 ahead on wine tasting and we have the authority to go ahead
23 on retail wine sales. We have the authority to basically do
24 what we did at our last meeting for the Los Gatos Roasting
25 Company, but I want to go beyond that, because since this
involves alcohol it must go to the Town Council in any

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

17

1 event, and I would ask them to explore the merit of
2 reviewing the existing alcohol policy and possibly bringing
3 it up 2006, or 2007 or 2008 or 2009.

4 As the town evolves and as these wine tastings
5 evolve, and as we have more wineries coming down from the
6 hills to establish a presence in town, that didn't exist ten
7 years ago, and maybe we have to reexamine the word "wine" in
8 our alcohol policy. Not to say what we should do, but I'd
9 like it to be examined. Things are changing and we're losing
10 some businesses and we're gaining some others, and I'm sure
11 the Council is aware of that.

12 It's not our authority to do what's being asked,
13 to sell single glasses of wine. We can do the tastings, we
14 can do the wine sales, we can help promote the wineries, we
15 have that much authority, but I'd specifically like to ask
16 Council to review the alcohol policy maybe for some changes
17 regarding glasses of wine and supporting the wineries.

18 CHAIR MICCICHE: I have a question of Staff. The
19 parking requirements that are related to the area, there are
20 designated ones for the retail store next to Café Rouge?

21 RANDY TSUDA: Yeah, these are purchased through
22 the parking district.

23 CHAIR MICCICHE: Okay. Since most of those
24 establishments close at a certain time, is the policy
25 flexible to say that after a certain hour that they're more
open to an area?

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

18

1 RANDY TSUDA: That's called an "alternating use of
2 parking," and in order to approve that they would need to
3 restrict the hours of operation for the other businesses in
4 that center. That's done through a conditional use permit
5 process whereby the Commission can impose those limitations
6 on the hours, therefore we have assurance that those
7 businesses will not change their hours, will not begin to
8 utilize the parking during (inaudible).

9 CHAIR MICCICHE: If an agreement could be made
10 with them to do something like that, could we relook at this
11 for additional seating after that time?

12 RANDY TSUDA: They can come back. It's another
13 conditional use permit application that needs to be agreed
14 to by the property owner and all the other tenants of that
15 building.

16 CHAIR MICCICHE: So they could know who has what
17 amount of parking associated with it, and if that parking is
18 available after 6:00 o'clock, then negotiate some firm
19 contract or change in modification to the CUP to accommodate
20 it, is that correct?

21 RANDY TSUDA: Right. What it means is, let's say
22 one of those spaces changed over to another retailer, that
23 retailer could not operate, say, after 6:00pm.

24 CHAIR MICCICHE: Right. So they would have to
25 agree, and probably the landowner would have to agree, and

1 so forth. But without that agreement there is nothing that
2 we could do then? Do you understand what I'm asking?

3 COMMISSIONER TALESFORE: Yeah, I do, but the
4 comment I would have on that, Phil, is that perhaps it would
5 eliminate someone... If one of these properties vacated and
6 someone else wanted to come in, and they gave extra classes
7 after... I mean I don't know, I'm making this up. If it was
8 like the makeup place, maybe she gives special makeup
9 lessons after hours, it's going to prevent that from
10 happening. Or then also be open during retail during
11 Christmas season.

12 CHAIR MICCICHE: Are you saying it's not up to me?
13 I've already said that.

14 COMMISSIONER TALESFORE: I'm saying that I don't
15 know about the question.

16 CHAIR MICCICHE: It would be up to the individuals
17 who have the present CUP. I would ask the owner to look at
18 that before he came back and then asked for more seats.

19 COMMISSIONER TALESFORE: I wonder if we're asking
20 ourselves (inaudible).

21 CHAIR MICCICHE: I don't think so, no. I'm just
22 trying to solve an issue that can be solved, okay?

23 COMMISSIONER TALESFORE: (Inaudible).

24 ORRY KORB: Let me just simply say that's all
25 interesting to contemplate in the future. It takes, as Mr.
Tsuda said, a whole new set of applications and an agreement

1 to back it up. There is precedent for that by the way,
2 because that was done at Campo di Bocce, but it was a fairly
3 complex operation, but that's not before you tonight. You
4 have a very clear issue before you tonight and parking is
5 restricted.

6 CHAIR MICCICHE: I was just doing it for the
7 future. In any event, any other comments? John.

8 COMMISSIONER BOURGEOIS: I'm going to go ahead and
9 make a motion.

10 CHAIR MICCICHE: Go ahead.

11 COMMISSIONER BOURGEOIS: I'd like to make a motion
12 to approve Conditional Use Permit U-06-20 only for a wine
13 tasting bar and retail wine sale on property zoned C-2.
14 Should I get a second before I make the motion or I make the
15 findings?

16 CHAIR MICCICHE: That's fine. You got a second.

17 ORRY KORB: And just for clarification, that's a
18 recommendation for approval.

19 COMMISSIONER BOURGEOIS: So since it's a
20 recommendation I still need to make all the findings, right?

21 CHAIR MICCICHE: Yes.

22 COMMISSIONER BOURGEOIS: Okay. So I could make the
23 findings that as required by section 15301 of the State
24 Environmental Guidelines that the project is categorically
25 exempt, and that under section 2920.190 of the Town Code for
granting conditional use permit that this body finds that

1 based on the evidence of the hearing that we've heard
2 tonight, and based on our Staff Report, that the proposed
3 property is desirable for the public convenience and welfare
4 based on the fact that local wineries are in support of
5 this, will not impair the integrity or character of the
6 zone, it's an existing business that is successful. Proposed
7 uses are not detrimental to public safety, health, or
8 general welfare, and that the proposed product is in harmony
9 with the various elements of the general plan and the
10 purposes of the Town Code, and that the town's alcohol
11 policy requires... No. So we're going to stick with 10:00pm
12 as in the conditions, so I don't need to make those findings
13 because it's not going past 10:00pm, and that the product is
14 consistent with the redevelopment plan for central Los Gatos
15 redevelopment project area.

16 RANDY TSUDA: And there's one other issue. We've
17 heard testimony tonight about that tripping hazard with the
18 loading zone and we talk about that in the Staff Report. I
19 think I'll have Fletch give you some discussion on that
20 issue.

21 FLETCHER PARSONS: It's an issue. I mean there's
22 no hiding that. I was out there for five minutes and saw two
23 people, and so it's something that we would like to get
24 addressed. The planter that we put out there was actually
25 taken very quickly. And so there are two options spelled out
in the Staff Report on page six, under 5A and B, and I would

1 like to just have the Planning Commission weigh in and maybe
2 include one of those, or some other option.

3 COMMISSIONER BOURGEOIS: Does Staff have a
4 preference for one of those options? I mean if we recommend
5 landscaping and it's already been stolen once, is there
6 something we can do?

7 FLETCHER PARSONS: Well, you know, there's lot of
8 different ways to do the landscaping. One is in raised pots;
9 one is to remove the concrete and actually plant in ground.
10 We can go to just putting a bike rack in there to block it
11 off. I mean there's a wide range of different esthetic
12 solutions to this, and I don't know that engineering really
13 wants to get into what it's going to look like. It needs to
14 be something that's maintainable.

15 COMMISSIONER BOURGEOIS: I would be inclined as
16 part of this motion to recommend that it be improved as a
17 landscaping area to the satisfaction of the director of
18 community development.

19 FLETCHER PARSONS: That's perfect.

20 COMMISSIONER O'DONNELL: Let me ask a question.
21 Did the town put the ramp in?

22 FLETCHER PARSONS: The town did put the ramp in.

23 COMMISSIONER O'DONNELL: So the town put it in,
24 it's a hazard, and we want the applicant to solve the
25 problem? Is that the position?

FLETCHER PARSONS: Yes.

1 COMMISSIONER O'DONNELL: That's bizarre.

2 FLETCHER PARSONS: We don't own the property
3 behind the ramp.

4 COMMISSIONER O'DONNELL: But if we put it in,
5 (inaudible).

6 FLETCHER PARSONS: We own the property where the
7 ramp is located, but not the property behind it.

8 COMMISSIONER O'DONNELL: If somebody falls down
9 and breaks their neck and sues the city, we might do
10 something to remedy it, right? So we have to wait for
11 somebody to...

12 FLETCHER PARSONS: But at the same time, if it's
13 separated by landscaping, something is done, and we're
14 working toward at some point getting extra seats. I mean
15 they proposed some sort of landscaping divider there to
16 begin with for that purpose. So if we're working toward that
17 direction, I don't see where they're really incompatible.

18 CHAIR MICCICHE: It looks like landscaping is the
19 consensus.

20 FLETCHER PARSONS: Landscaping is what we'd like
21 to see. There was initially a bike rack placed behind this
22 when the ramp was put in. We were required to remove it
23 because this area is a loading zone and we had to keep it
24 open.

25 CHAIR MICCICHE: Do we have a consensus on
landscaping it?

1 COMMISSIONER O'DONNELL: I don't. I think it's
2 wrong to have an applicant correct our mistake at the
3 applicant's expense, so you guys can do what you want on
4 that, but I just want it to go on the record that I don't
5 support that.

6 CHAIR MICCICHE: You got the consensus. Okay, I'm
7 going to call the motion.

8 COMMISSIONER KANE: Some discussion, Mr. Chairman?
9 The motion has been made and seconded, and if Mr. Korb
10 perhaps could guide me that this is the time and the place
11 to do it, I'd also want the motion to go forward to the
12 Council with the question on destination Los Gatos wineries,
13 that we need something in the future.

14 There are applications being made, there's energy
15 afoot, the people are coming down with their wines, and I
16 don't want to just send this up to them as a neutral or a
17 neutered issue, that we want some guidance on what may
18 happen in the future. We can't rule with law that we don't
19 have, and the future is now. And I wonder if we can get some
20 clarification on the coming wine industry?

21 ORRY KORB: Not from me, but I will tell you that
22 your comments previously made and just made would be
23 included in the record that would be sent up to the Council
24 for its review, so your concerns are there and will be
25 before them.

COMMISSIONER KANE: Thank you.

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street

1 CHAIR MICCICHE: I'd like to call the motion. All
2 in favor? Against? Did I get an aye from you, Commissioner
3 O'Donnell? Four-two.

4 ORRY KORB: The decision of the Commission is a
5 recommendation to the Town Council. This will be heard by
6 the Town Council at a future date. It will be noticed
7 accordingly. If you have any questions about when that is,
8 please contact the community development department.

LOS GATOS PLANNING COMMISSION 6/28/2006
Item #3, 42 Elm Street