



MEETING DATE: 03/05/07
ITEM NO.

10

COUNCIL AGENDA REPORT

DATE: March 1, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION DENYING A REQUEST TO APPROVE EXTERIOR MODIFICATIONS TO A COMMERCIAL BUILDING, AND MODIFICATION OF AN EXISTING CONDITIONAL USE PERMIT TO ALLOW EXPANSION OF AN EXISTING RESTAURANT (VITTORIA) AND A CHANGE IN ALCOHOL SERVICE ON PROPERTY ZONED C-2. PROPERTY LOCATION: **25-27 N. SANTA CRUZ AVENUE**. FILE #S-07-12 & U-07-09. PROPERTY OWNER/APPLICANT & APPELLANT: SANTA CRUZ REAL, LLC.

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Council may take any of the following actions on Architecture & Site application S-07-12 and Conditional Use Permit application U-07-09 (**motion required**):
 - a. Approve the A&S and CUP applications as proposed or with modified conditions;
 - b. Approve only the change in alcohol service under U-07-09;
 - c. Approve only the restaurant expansion under U-07-09; or
 - d. Deny the A&S and CUP applications.
4. Refer to the Town Attorney for the preparation of the appropriate resolution (**no motion required**).

If the Town Council determines that the Planning Commission's decision should be reversed or modified relative to the A&S appeal and/or CUP modification:

1. The Council needs to find one or more of the following:
 - (1) Where there was error or abuse of discretion on the part of the Planning Commission;or

PREPARED BY: Bud N. Lortz, Director of Community Development

Reviewed by: PSY Assistant Town Manager OK Town Attorney _____ Clerk _____ Finance
✓ Community Development

Revised: 3/1/07 9:48 AM

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- (2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or
 - (3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.
2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
3. If the appeal is approved, use the findings and consideration of the Architecture and Site applications (Attachment 2), and modify the conditions in Attachment 3 as appropriate.
4. Refer to the Town Attorney for preparation of the appropriate resolution(s).

PROJECT SUMMARY:

The applicant is requesting to expand an existing restaurant into part of the tenant space at 25 N. Santa Cruz and to add 24 seats for a total of 84. In addition, the existing beer and wine license is proposed to be upgraded to a full liquor license. The remainder of the adjacent space will be combined with the space at 23 N. Santa Cruz for the new Apple store. Façade improvements are proposed for both the restaurant and retail uses. Given the recent approval of the façade of the Apple tenant space, the applicant has revised the A&S application to include only the proposed changes relative to the portion of the building that will be used for the restaurant expansion.

BACKGROUND

The subject applications involve two buildings located on the west side of N. Santa Cruz Avenue, between Main Street and Bean Avenue. The existing restaurant, Vittoria, is currently operating within the building at 27 N. Santa Cruz Avenue. The two adjacent tenant spaces at 23 and 25 N. Santa Cruz are vacant.

On December 13, 2006 the Planning Commission considered an Architecture & Site (A&S) application for façade improvements for both the restaurant and retail spaces. The applicant asked that the Commission act on the A&S application independently and requested a continuance for the CUP application. The Commission expressed concern about acting on the exterior modifications prior to approval of the restaurant expansion, and continued the matter to January 10, 2007 so that the two applications could be considered together.

On January 10, 2007 the Planning Commission denied the A&S application for exterior modifications to the buildings and recommended denial of the CUP modification. The Commission

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did not support the restaurant expansion as it would displace what was previously a retail use. The tenant space has been vacant since 2004. The applicant appealed the denial of the A&S application. The Commission's actions on the CUP were recommendations only as the Council is the final review authority since the application involves a change in the service of alcohol.

On February 14, 2007 the Planning Commission approved a Conditional Use Permit (CUP) for a formula retail use (Apple Computer). A companion A&S application was approved for façade improvements for the retail tenant space. The Apple store will encompass the entire tenant space at 23 N. Santa Cruz and part of the space at 25 N. Santa Cruz.

Architectural Review

The Town's Consulting Architect, Larry Cannon of Cannon Design Group, reviewed the plans and visited the site. The recommendations of the Consulting Architect are as follows:

- Clarify the profile of the parapet cap on the storefront.
- Clarify the intent of the elements above the restaurant doors.

The applicant is in agreement with these recommendations. Staff and the Consulting Architect can work with the applicant to make any required architectural changes. A condition of approval has been included to this affect.

Conditional Use Permit

The modification to the CUP includes an increase in seating from 60 to 84, and a request for a full liquor license. The applicant states that the existing restaurant space is very narrow and will have a more functional floor plan with the proposed expansion. In addition, a food preparation area will be added to facilitate service to restaurant patrons. The applicant's letter explaining the rationale behind the requested expansion is Exhibit H to Attachment 5.

One of the primary concerns leading to the request to modify the tenant spaces at 23-25 N. Santa Cruz is their narrow width and deep length. According to the applicant, none of the spaces are efficient or fully functional in their present configuration. There are no other spaces on N. Santa Cruz with a more extreme width to depth ratio than 23 N. Santa Cruz (14 feet wide, 134 feet deep). Given the approval of the CUP for Apple Computer, the combination of the space at 23 N. Santa Cruz and a portion of the space at 25 N. Santa Cruz will provide a more viable use of the floor area within that tenant space. The restaurant expansion would use the remainder of the space at 25 N. Santa Cruz to make Vittoria a more viable restaurant in addition to providing much needed food prep areas. The prep area at the rear has not been used for active retail functions for at least 20 years.

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Parking

The Zoning Ordinance requires one space for every four seats for a restaurant without a separate bar, and one space for every 300 square feet for retail uses. A total of 38 parking spaces are required. There is no on-site parking, but the properties are within the Downtown Parking Assessment District and have a total of 39 parking credits to support the restaurant and retail spaces. Therefore the application is consistent with the parking requirement. The table below summarizes the parking demand:

Parking Analysis					
<i>address</i>	<i>use</i>	<i>square feet</i>	<i>seats</i>	<i>parking requirement</i>	<i>total spaces required</i>
27 N. Santa Cruz	restaurant	3,936	84	1 space/4 seats	21
23 N. Santa Cruz	retail	5,148	-	1 space/300 sf	17
Total		9,084	84		38

Traffic

The Town Traffic Engineer conducted a traffic analysis and determined that expansion of the restaurant would not result in a significant traffic impact. The applicant will be required to pay a Traffic Impact Mitigation Fee based on an increase in trips during the AM and PM peak periods.

Alcohol Policy

The Town's Alcohol Policy requires any change in the service of alcoholic beverages to be approved by the Town Council. The request is consistent with the general policies in section II and the specific policy in section IV (see exhibit L). The restaurant is currently open until 11:00 pm daily and the applicant is not requesting to modify the approved hours of operation.

The Alcohol Policy also requires the Council to make a finding in support of the service of alcohol after 10:00 pm. Although the restaurant already is approved to serve alcohol until 11:00 pm, the change in service being requested under the CUP modification necessitates that this finding be made relative to approval of a full liquor license. Vittoria does not have a separate bar and has only a few counter seats. The restaurant has been operating with a beer and wine license and has no history of complaints or Police activity.

Restaurant Use in the Downtown

Due to a concern about the increasing number of restaurants in the Downtown, the Town Council adopted Ordinance 2021 in 1996. This ordinance discourages the displacement of retail uses by new restaurant uses and requires the Planning Commission to conduct a careful review of all applications for new restaurant uses in the C-2 zone through the public hearing process. Vittoria is not a new

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restaurant, but does involve expansion of an existing restaurant into space that was previously occupied by a retail use.

The applicant believes that with a tenant moving into the retail space that is likely to be highly successful, the restaurant expansion will not be detrimental to the success of the Downtown. The restaurant currently has a disproportionate amount of space dedicated to the kitchen relative to the area devoted to seating. The creation of two functional tenant spaces will eliminate the current inefficient use of space that the owner has experienced difficulty in leasing in their present configuration. The reconfiguration of the tenant spaces will also assist the applicant in more easily leasing the spaces should either business close or relocate in the future.

PLANNING COMMISSION ACTION:

The Planning Commission did not support the restaurant expansion because of a concern about the displacement of a space formerly occupied by a retail use. This is a policy issue and the Commission did not feel it had the authority to approve the expansion due to the stated intent of the desire not to approve additional restaurant uses in the Downtown. The companion A&S application was denied since the expansion was not supported. In addition, the Commission did not feel it appropriate to approve the modifications for the exterior of the Apple space without a known use. The CUP and A&S applications for Apple were filed after these actions were taken.

FISCAL IMPACT:

None

CONCLUSION:

If the Council decides to approve the modifications to the CUP and the exterior improvements, it should make the required findings and considerations specified in Attachment 1, and approve the applications, subject to the conditions in Attachment 2. If the Council decides to approve the CUP modification in part, a condition should be added specifying the specifics of the approval.

Attachments:

1. Required Findings & Considerations (four pages)
2. Recommended Conditions of Approval (four pages)
3. January 10, 2007 Planning Commission Minutes (20 pages)
4. January 10, 2007 Planning Commission Desk Item with Exhibits O-U
5. January 10, 2007 Report to the Planning Commission with Exhibits H-M
6. December 13, 2006 Planning Commission Desk Item with Exhibit G
7. December 13, 2006 Report to the Planning Commission with Exhibits A-F
8. Letter from Larry Justo Arzie (one page), received February 24, 2007

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Distribution:

Alex Giovannotto, Santa Cruz Real, LLC. P. O. Box 60177, Palo Alto, CA 94306

Lou Dorcich, Architect, P. O. Box 1149, Soquel, CA 95073-1149

BNL:SD

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REQUIRED FINDINGS FOR:

23-27 N. Santa Cruz Avenue

Architecture and Site Application S-07-12

Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

Required finding for CEQA:

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

Required finding for the granting of a Conditional Use Permit:

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

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

1. The proposed use of the property is essential or desirable to the public convenience or welfare;
2. The proposed use will not impair the integrity and character of the zone;
3. The proposed use would not be detrimental to public health, safety or general welfare;
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.

Required findings for projects within the Central Los Gatos Redevelopment Area:

- 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.

Required findings for a change in the service of alcohol:

- As required by the Town's Alcohol Policy (Resolution 2001-106) regarding the service of alcoholic beverages past 10PM:
 - A. Late night service will not adversely impact adjacent residential neighborhoods.
 - B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.
 - C. The applicant has demonstrated a clear benefit to the community.

Compliance with the Commercial Design Guidelines

- The proposed exterior changes are consistent with the Commercial Design Guidelines.

CONSIDERATIONS:

Considerations in Review of Architecture & Site Applications

As required by Section 29.20.150 of the Town Code for Architecture and Site applications, the deciding body shall consider all relevant matter including, but not limited to, the following:

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.
 - A. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:
 1. The ability of critical roadways and major intersections to accommodate existing traffic;
 2. Increased traffic estimated for approved developments not yet occupied; and
 3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.
 - B. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:

1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks and Public Works for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.
- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access.

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.

- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.
- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on non-accessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a non-accessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.
- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.

TOWN COUNCIL MARCH 5, 2007
CONDITIONS OF APPROVAL

23-27 N. Santa Cruz Avenue

Architecture and Site Application S-07-12

Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans noted as received by the Town on December 5, 2006 and approved by the Town Council on March 5, 2007. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. EXPIRATION OF APPROVAL: The Conditional Use Permit application will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. BUSINESS OPERATION. This approval is for a quality restaurant use. Any change in the type of business requires modification of the Conditional Use Permit.
4. LIVE ENTERTAINMENT. No live entertainment is allowed.
5. ROOFTOP EQUIPMENT. Any new roof mounted equipment shall be fully screened prior to issuance of an occupancy permit.
6. SIGNS. The exterior business sign(s) shall comply with the Los Gatos Shopping Center Sign Program.
7. ARCHITECTURAL CHANGES. The recommendations of the Consulting Architect shall be incorporated into the plans prior to submittal of plans for building plan check.
8. HOURS OF OPERATION. Hours of operation are limited to 11:00 am to 11:00 pm daily.
9. SEATS. The maximum number of seats is 84.
10. ALCOHOL SERVICE. Alcoholic beverages shall be served with meals only.
11. TRASH ENCLOSURE. The final design of the trash enclosure shall be approved by planning prior to issuance of permits.
12. 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 pursuant to Section 29.20.340 of the Zoning Ordinance.

Building Division

13. PERMITS REQUIRED: A building permit shall be required for the alterations and expansion of existing restaurant. Separate permits are required for electrical, mechanical, and plumbing work as necessary.

14. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
15. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
16. TITLE 24 - COMMERCIAL: For any proposed tenant improvements, the building shall be upgraded to comply with the latest California Title 24 Accessibility Standards. Necessary work shall be first investigated by the design architect, then confirmed by Town staff.
17. TITLE 24 - RESTAURANT USE: A proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:
 - a. West Valley Sanitation District: (408) 378-2407
 - b. Environmental Health Department: (408) 885-4200
 - c. Town Public Works Department: (408) 399-7530
18. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov.
19. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print.
20. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538).
21. EASEMENT. The property owner shall execute and record an easement for the proposed restaurant additions which encroach on adjacent parcel. The Town of Los Gatos shall be listed as a third party on the easement agreement. The easement document shall be reviewed and approved by the Town prior to recordation.
22. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
 - a. Community Development - Planning Division: Suzanne Davis at 354-6875
 - b. Engineering/Parks & Public Works Department: Fletcher Parsons at 395-3460
 - c. Santa Clara County Fire Department: (408) 378-4010
 - d. West Valley Sanitation District: (408) 378-2407
 - e. Environmental Health Department: (408) 885-4200

TO THE SATISFACTION OF SANTA CLARA COUNTY ENVIRONMENTAL HEALTH:

23. PLAN CHECK. Plans for the food prep and storage areas, food display cases and any wait stations shall be submitted for approval by the County Environmental Health Plan Check Division.
24. SNEEZE GUARDS. Sneeze guards shall be installed for the countertop area in the existing facility.

TO THE SATFISFATION OF THE DIRECTOR OF PARKS &PUBLIC WORKS

Engineering Division

25. **TRAFFIC IMPACT MITIGATION FEE.** The developer shall pay a fee proportional to the project's share of transportation improvement needed to serve cumulative development within the Town of Los Gatos. The fee amount will be based upon the Town Council resolution in effect at the time the building permit application is made. The fee shall be paid before the building permit is issued. The traffic impact mitigation fee for this project, using the current fee schedule and the preliminary plans is \$3,370.18. The final fee shall be calculated from the final plans using the rate schedule in effect at the time of the building permit application, using a trip generation rate based on Quality Restaurant use. The fee estimate is based on conversion of 1,422 square-feet of Specialty Retail to Quality Restaurant. The number of restaurant seats is increased from 60 to 84 (additional 24 seats).
26. **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.
27. **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.
28. **PUBLIC WORKS INSPECTIONS.** The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
29. **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.
30. **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.

31. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
32. SIDEWALK CLOSURE/STREET PARKING. An encroachment permit will be required for temporary sidewalk closure. The applicant shall contact George Garcia (399.7530) for specific signage and safety requirements, and to obtain the permit. The applicant shall coordinate any temporary blockage of street parking with the Police Department.

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

Los Gatos Planning
Commissioners:

Joanne Talesfore, Chair
John Bourgeois
Michael Kane
Phil Micciche
Tom O'Donnell
Steve Rice
Marico Sayoc

Assistant Director of
Community Development:

Randy Tsuda

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LOS GATOS PLANNING COMMISSION 1/10/2007
Item #1, 23-27 N. Santa Cruz Avenue

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

CHAIR TALESFORE: We do have Item #1, and it's at
23-27 North Santa Cruz Avenue. I'm going to give the
commissioners a few minutes to review. We have a desk item
and I haven't even seen it myself, so excuse us while we
look at this.

(Pause for a few minutes.)

CHAIR TALESFORE: Okay, Commissioners, are
we ready to proceed with the new desk item, which is hefty?
I'm going to allow any clarifying questions of Staff before
we start, if that would be helpful. So if you have any,
please proceed. Okay, Commissioner Kane.

COMMISSIONER KANE: Mr. Tsuda, the floor plan
dated January 10, 2007, I'm sure it's in front of my nose,
but I don't see the revision. How is this different from the
November 13th?

RANDY TSUDA: It's in there. It's in the outdoor
dining area.

COMMISSIONER KANE: I didn't know there was an
outdoor dining area. There is now?

LOS GATOS PLANNING COMMISSION 1/10/2007
Item #1, 23-27 N. Santa Cruz Avenue

1 RANDY TSUDA: There was always an alcove there
2 they've now called out specifically; it's an outdoor patio.
3 I'm showing a few tables and chairs out there. They're also
4 clarifying how the emergency egress would work through that
5 patio area.

6 COMMISSIONER KANE: Will it be an alarm door, or
7 will it be a functional door?

8 RANDY TSUDA: They're showing what under the
9 Building Code they need to keep in a corridor clearly
10 delineated and separated from obstructions, so what they've
11 done is installed a railing at the south end of that patio
12 to ensure that there will be no tables in that exit
13 corridor.

14 CHAIR TALESFORE: That's a railing and not a wall?
15 It says "new wall," but is it really a railing?

16 RANDY TSUDA: It says "new wall" along the front,
17 and "railing" along the corridor. The railing runs
18 perpendicular to the wall.

19 CHAIR TALESFORE: Commissioners, do you need some
20 more time to look at this? Commissioner O'Donnell.

21 COMMISSIONER O'DONNELL: (Inaudible) and you have
22 to look very, very carefully. Maybe I'm missing it, but the
23 only thing I see different is a modified (inaudible). You
24 have a drawing of what I guess are the tables.

25 RANDY TSUDA: Correct.

1 COMMISSIONER O'DONNELL: The original says
2 "proposed outside patio." The new one says, "proposed
3 outside patio," and has three drawings of three tables, and
4 I assume they have to be there. I assume that means there
5 are going to be three tables within that area?

6 RANDY TSUDA: Right. They clarified that they're
7 requesting that they be allowed to put tables and chairs in
8 that outdoor patio area, therefore we've modified the
9 recommended conditions to clarify that the 84 seats include
10 any tables outside as well as inside.

11 COMMISSIONER O'DONNELL: So when you did the first
12 drawing and you said 84 seats, did you count 84 seats?

13 RANDY TSUDA: That was their request. The request
14 was 84.

15 COMMISSIONER O'DONNELL: I understand that, but
16 when you had the drawings, did you see where the 84 seats
17 would go?

18 RANDY TSUDA: The 84 seats were inside. What the
19 applicant is asking for is that in times of good weather
20 they can bring some of those tables outside and distribute
21 those 84 seats between the patio and the indoor area.

22 COMMISSIONER O'DONNELL: So we're being asked to
23 say that it's 84 seats, whether you put it inside or
24 outside?

25 RANDY TSUDA: Correct.

COMMISSIONER O'DONNELL: Thank you.

1 CHAIR TALESFORE: And by seats, you don't mean
2 tables; you mean actual seats, so that could be six chairs
3 at one table?

4 RANDY TSUDA: We're talking about 84 seats.

5 CHAIR TALESFORE: Thank you. I wanted to clarify
6 that. Does anyone else have any other questions on that?

7 So let me say then that we will be hearing Item
8 #1, which is 23-27 North Santa Cruz Avenue, Architecture and
9 Site Application S-07-12, Conditional Use Permit U-07-09,
10 requesting approval of exterior modifications to a
11 commercial building and to modify an existing conditional
12 use permit to allow expansion of an existing restaurant and
13 a change in alcohol service on property zoned C-2.

14 That being said, we have on this first item, it is
15 one conditional use permit asking for two things, which is
16 an expansion of an existing restaurant, and a change in
17 alcohol service on property zoned C-2. The A&S, Architecture
18 and Site, is asking for façade changes to building #23 and
19 building #25 to reflect building #27 that's already there.

20 That being said, how do we approach this tonight?
21 So I would like to put forth when we are looking at this
22 that we look at it as three issues, and possibly, and I'll
23 take comments, three separate motions; one for the alcohol,
24 one for the restaurant expansion, and then the third for
25 Architecture and Site.

1 I'm happy to take some comments. I spoke with Mr.
2 Tsuda and I think he was in agreement with that.

3 RANDY TSUDA: You have the A&S conditions that
4 were attached to the previous Staff Report as Exhibit C, so
5 those were conditions specifically written for the
6 architectural changes to #23 and #25 North Santa Cruz.

7 CHAIR TALESFORE: Say that again. Say that one
8 more time.

9 RANDY TSUDA: Exhibit C was attached to a previous
10 Staff Report.

11 CHAIR TALESFORE: A previous Staff Report from
12 last month?

13 RANDY TSUDA: From last month.

14 CHAIR TALESFORE: Okay, do we have those?

15 RANDY TSUDA: Exhibit C is a letter.

16 CHAIR TALESFORE: The conditions are Exhibit C.
17 Yes, right here. I have them.

18 RANDY TSUDA: You have it?

19 CHAIR TALESFORE: I have them.

20 RANDY TSUDA: (Inaudible).

21 CHAIR TALESFORE: Okay. Thank you. All right, so
22 that being said, what we are being asked to do is also
23 guided by the policy regulating the consumption and service
24 of alcoholic beverages and our 2021 Ordinance that we need
25 to make findings for in consideration of this, in review of
this application, and you received that in the packet. So do

1 we have any further questions before we proceed at this
2 point?

3 COMMISSIONER KANE: No, I agree with the way
4 you've broken the case down, and in fact in the order in
5 which you've broken it down. I think it's logical to do the
6 A&S last.

7 CHAIR TALESFORE: Commissioner O'Donnell.

8 COMMISSIONER O'DONNELL: I question whether we
9 should consider the liquor first as opposed to expansion. It
10 seems to me that were we to deny the expansion, the
11 consideration of the liquor might have something to do with
12 the size of (inaudible); whereas if we decide the liquor
13 first, I'm not sure what assumption we're making. So I would
14 suggest that we consider the expansion first, the liquor
15 second, and the architecture and site third. It would
16 influence me on the liquor license question to see the
17 size; it's very narrow in the present location. So that's
18 my suggestion.

19 CHAIR TALESFORE: What does anyone else feel about
20 that? That was my first thought, and then I switched over to
21 the way I presented to you. So Commissioner Rice, you have
22 an idea?

23 COMMISSIONER RICE: I would agree with
24 Commissioner O'Donnell.

25 CHAIR TALESFORE: Okay, and we have a consensus on
that. All right, so we'll proceed with the restaurant

1 expansion, liquor, and then the Architecture and Site. Okay,
2 I think we've done it.

3 And then I had one other question of Staff and
4 that is on the Architecture and Site, the design guidelines,
5 thank you very much for including them on the desk item, and
6 that is applicable to this application, is it not?

7 RANDY TSUDA: Yes, what we've done is included the
8 design guidelines that are specifically for this district,
9 the C-2A district, this portion of downtown.

10 CHAIR TALESFORE: Thank you very much. Okay, good,
11 and those are what we do need to pay attention to as well.
12 All right, that being said, I have a speaker on this. Was
13 the applicant here tonight? Mr. Lewis Dorcich? No, this is
14 just the speaker. Could the applicant please come forward?

15 SAL GIOVANNOTTO: Hi, my name is Sal Giovannotto.
16 I am the owner of this project and (inaudible). Maybe I can
17 ask (inaudible) first we can (inaudible) for the restaurant.
18 As you know, it's a nice restaurant that's been written in
19 every paper for being one of the things the city should be
20 proud of, except it's too small and too noisy.

21 People come at 7:00 o'clock, we don't have enough
22 seats to seat them, and it's too noisy, and we just cannot
23 go on like this, so the only thing we can do is make some
24 expansion so maybe we can break the sound.

25 And the other thing is we don't have a prep room,
so all the preparation of food is done all over the counters

1 and we have a problem with the health department, because
2 they like to have plastic screens all over, so there's no
3 contact between food and customers, so either this gets or
4 we have to close.

5 So first we have no room to serve people, and
6 second, like I said, it's too noisy and we have no place to
7 prepare the food.

8 I don't know what else, so this is as far as the
9 restaurant is fine. Next Should we talk about all of them,
10 or just we talk about the restaurant first, or what?

11 CHAIR TALESFORE: Why don't you talk about all
12 three?

13 SAL GIOVANNOTTO: Okay. I don't know what else, so
14 as far as next door, we tried to remodel the front. We have
15 some people interested and they would like to see something
16 like that before even they will sign a lease or they
17 wouldn't be interested in doing anything. And we think it's
18 pretty simple.

19 As far as the restaurant, we are within the code
20 and we have the right parking. We have everything correct
21 for being no problem.

22 As far as the store, like I said, if there's going
23 to be a change, it's going to go back to you and will have
24 nothing to do with you approving this. You can approve this,
25 and if you wish, then you don't approve the tenant, so you
still have control.

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1 As you know, this building has been vacant since
2 when I bought it, which was 2004, so something has to be
3 done. I don't know if you've been driving by; it looks like
4 the worst building on the whole street, and it's a shame
5 because I will make it the prettiest building on the street.
6 I've got the means to make it nice, and right now that block
7 after 6:30, 7:00, 7:30, there's nobody there except for
8 motorcycles parking there and smoking.

9 So I don't know what else to say. Like I said,
10 since I own in 2004, we play all kind of games and still the
11 building is abandoned. A lot of people blame you guys
12 because every time they ask what happened, so we say, "Oh,
13 that's the city."

14 So that's it. I think it's a very simple thing.
15 The restaurant is not functional the way it is, which
16 unfortunately I should have known before I did it, and I'm
17 not an expert, so I don't know what else I can say. If you
18 have any questions, I'll be glad to answer them. But like I
19 said, as far as I'm concerned, it's a very simple thing,
20 very legal, very conforming. I'm not asking for anything
21 that... And again to remind you, since 2004 it's been boarded
22 up.

23 CHAIR TALESFORE: Okay, are you finished?

24 SAL GIOVANNOTTO: Yes.

25 CHAIR TALESFORE: You have more time. I don't want
to rush you.

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1 SAL GIOVANNOTTO: No, I don't have anything else.

2 CHAIR TALESFORE: Questions of the applicant?

3 John.

4 COMMISSIONER BOURGEOIS: Thank you. I just want to
5 make sure I heard you correctly. Now you said if you don't
6 get these changes, you're going to have to close the
7 restaurant?

8 SAL GIOVANNOTTO: Yes.

9 COMMISSIONER BOURGEOIS: Okay. But you're so busy
10 and successful that you need more space.

11 SAL GIOVANNOTTO: Well we're not successful.
12 People come between 7:00... I mean this is your town, and it's
13 my town now too, so if you've been in the restaurant, 7:30
14 we have a lot of people come there and we have no place to
15 seat them. And then around 8:00 o'clock everybody's gone.
16 Eight, 8:30, the city has nothing else to do around there,
17 so we have only 35 seats in the front. Nobody will sit in
18 the back because it has a have very low ceiling and is very
19 dark, so we never have anybody sit in the back, so we cannot
20 deal with 40 customers in one day.

21 And then on top of that, which if you've been
22 there, and you should have been there, you can see that it's
23 very, very noisy. Like I said, inside there is (inaudible).
24 That's one-and-a-half sheets of plywood to put down. It's
25 really (inaudible), and out of that you have to walk
through, so it is really impractical, and it's a shame

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1 because I did put my heart in that thing. If you've been
2 there, it's really pretty. I did not spare any money to make
3 it really something nice for the city and for the customers.

4 COMMISSIONER BOURGEOIS: Thank you.

5 SAL GIOVANNOTTO: You're welcome.

6 CHAIR TALESFORE: Does anyone else have any
7 questions at this time of the applicant? Commissioner Kane.

8 COMMISSIONER KANE: Sir, you made the comment that
9 the expansion was legal, and that sometimes the Planning
10 Commission is to blame for the space still being vacant. I
11 just wanted to know if in fact you are familiar with
Ordinance 2021?

12 SAL GIOVANNOTTO: No, I'm sorry, I don't know
13 anything about ordinances. What I know is I have adequate
14 parking for the expansion, so to me, why not? I mean you can
15 look at anything you want and deny anything and that's okay.
16 I'm just saying I do qualify for parking. The restaurant is
17 already there. I just don't see where would be the problem.
18 No, I don't know the ordinance.

19 COMMISSIONER KANE: I suspect one of things we'll
20 be discussing tonight is the applicability of Ordinance
21 2021, and I was hoping you or your representatives were
22 aware of it so that you wouldn't be upset by it, because
23 it's not an initially favorable looking ordinance and it
24 goes to the issue of legal expansion. I mean there is a
25 question, and the ordinance seems to be rather black and

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1 white, or at least suggestive of we better discuss this and
2 find out if it fits, and I wondered if you knew about it.

3 SAL GIOVANNOTTO: What is this ordinance about?
4 What are you talking about?

5 COMMISSIONER KANE: Well 2021 says in part that
6 the ordinance is intended to discourage the displacement of
7 retail uses by restaurant uses.

8 SAL GIOVANNOTTO: Can't you just approve
9 (inaudible) restaurant to serve food? I mean I have a little
10 restaurant and you don't want to. I don't know, you do
11 whatever you have to do. I don't think I can answer your
12 question, sir.

13 COMMISSIONER KANE: I don't want to debate the
14 point, sir. I didn't mean to.

15 SAL GIOVANNOTTO: That's okay.

16 COMMISSIONER KANE: I just wondered if you were
17 aware of that provision.

18 SAL GIOVANNOTTO: I've been through this before.
19 That's okay. It's okay.

20 CHAIR TALESFORE: Okay, thank you very much.

21 SAL GIOVANNOTTO: You're very welcome.

22 CHAIR TALESFORE: Does anyone else have a question
23 of the applicant at this time? Seeing none, thank you very
24 much, sir, and you'll have a chance to come back up in a few
25 minutes. You might want to sit close by. Okay, I have one
speaker card tonight, and that is Mr. Louis Dorcich.

1 LOUIS DORCICH: Lou Dorcich, architect. I'm the
2 project architect for the application, and I was prepared to
3 answer any questions regarding the Site and Architectural
4 component of the submittal, and if there's none at this
5 time, I would be happy to come back later if there were. So
6 at this point it seems like you're probably in discussion
7 more on policy issues and whether or not you are going to
8 allow this use, but anytime you're ready to discuss the
9 design aspects of the application, I'd be happy to speak to
10 that.

11 CHAIR TALESFORE: We can ask questions about
12 Architecture and Site though. We are going to entertain the
13 while application as one, and you are the architect,
14 correct?

15 LOUIS DORCICH: Yes.

16 CHAIR TALESFORE: All right, so do we have
17 Architecture and Site questions now?

18 ORRY KORB: Excuse me, do you have a presentation
19 that you'd like to make on the architecture before any
20 questions come to you?

21 LOUIS DORCICH: I could do a brief summary of our
22 intent.

23 ORRY KORB: You're not required to do it; I just
24 wanted to make sure that you (inaudible).
25

1 LOUIS DORCICH: Sure. There were some questions
2 earlier regarding our submittal today, and that was
3 primarily to clarify the use of the outdoor patio area.

4 CHAIR TALESFORE: Well sir, let's clarify this.
5 Did you come here prepared with a presentation on the
6 Architecture and Site?

7 LOUIS DORCICH: No, I didn't.

8 CHAIR TALESFORE: All right.

9 ORRY KORB: And just a reminder to the Commission
10 that Mr. Dorcich did discuss the Architecture and Site
11 portion of the application at your last meeting.

12 CHAIR TALESFORE: Thank you. All right. So we'll
13 proceed with any questions at this point then.
14 Commissioners, do you have any? Commissioner Kane.

15 COMMISSIONER KANE: Being the architectural
16 person, you'll also be involved in the materials that would
17 be used?

18 LOUIS DORCICH: Yes.

19 COMMISSIONER KANE: The retail store, potential
20 store, to the south of the restaurant, the front of that
21 building, the façade, what material are you intending to put
22 there?

23 LOUIS DORCICH: We were proposing the dark tinted
24 glass, the stainless steel was going to be a matt finish, a
25 rather high tech look. It's not shiny but it has some
reflective quality. And per the Staff Report, we're willing

1 to work with Staff and a consulting architect to modify that
2 design to bring it more into conformance with the Town
3 standards.

4 COMMISSIONER KANE: That's what I'm driving at,
5 because the Guidelines for the CBD discourages and prohibits
6 the use of metal on a storefront, and I guess I'd need to
7 see that to see if it works in the neighborhood. We've got a
8 limitation or restriction against metal, and I guess it's
9 there for a reason, so to make a decision on that I myself,
10 I guess, would need to see it.

11 LOUIS DORCICH: That will be made available when
12 we get back to working with Staff on the final design and
13 resolution, and we'd be happy to invite you to participate
14 in that.

15 COMMISSIONER KANE: That would be like after this
16 decision is made?

17 LOUIS DORCICH: Sure.

18 COMMISSIONER KANE: Well, I wouldn't want to see
19 it then. Can I ask Mr. Tsuda a question?

20 CHAIR TALESFORE: Is it relative to this?

21 COMMISSIONER KANE: Of course.

22 CHAIR TALESFORE: Yes.

23 COMMISSIONER KANE: Mr. Tsuda, am I going in a
24 wrong direction? We have a concern or restriction on metal,
25 and stainless steel is kind of like metal.

1 RANDY TSUDA: Like any A&S application, if the
2 Commission has fundamental changes or problems, issues with
3 the design, those need to be brought to the surface at this
4 meeting and any major changes should have conditions adopted
5 that address those changes.

6 COMMISSIONER KANE: I'm comfortable leaving it up
7 to someone else's discretion, but I'm never comfortable
8 giving out black and white language.

9 CHAIR TALESFORE: Thank you. Commissioner
10 O'Donnell.

11 COMMISSIONER O'DONNELL: Just a follow-up
12 question.

13 CHAIR TALESFORE: Of Staff?

14 COMMISSIONER O'DONNELL: Of Staff.

15 CHAIR TALESFORE: Okay.

16 COMMISSIONER O'DONNELL: If that's the policy and
17 you discussed this with this gentleman, did you tell him
18 that proposal violated the policy?

19 RANDY TSUDA: That was a discussion when the
20 Giovannottos had a tenant for the space, which as you know,
21 Apple in the past has applied to go into that space. We had
22 those discussions with Apple at that time and they're aware
23 of that policy.

24 COMMISSIONER O'DONNELL: So you have a
25 recommendation here that we approve this, right?

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1 RANDY TSUDA: The consulting architect has found
2 that in this case for a very specific kind of a tenant it
3 strikes a balance between the Town's guidelines and the
4 tenant's need to express their type of store and their
5 brand.

6 COMMISSIONER O'DONNELL: The restaurant needs
7 metal?

8 RANDY TSUDA: No. The A&S is for the entire
9 building.

10 COMMISSIONER O'DONNELL: Right.

11 RANDY TSUDA: Right.

12 COMMISSIONER O'DONNELL: But what is it that needs
13 the metal?

14 RANDY TSUDA: It's the retail tenant space.

15 COMMISSIONER O'DONNELL: The unknown retail
16 tenant?

17 RANDY TSUDA: Right.

18 COMMISSIONER O'DONNELL: And that unknown retail
19 tenant needs metal?

20 RANDY TSUDA: Is what the property owner is
21 submitting.

22 CHAIR TALESFORE: I don't have any more questions
23 at this time. No one has questions anymore. Thank you very
24 much.

25 LOUIS CORCICH: Thank you.

CHAIR TALESFORE: And Larry Arzie.

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1 LARRY ARZIE: My name is Larry Arzie. In essence
2 this is a new restaurant space. It's not even in the same
3 building; it's located in the adjacent building. The Town
4 has often bragged that we have not opened a new restaurant
5 in ten years. This would be a precedent making decision if
6 you allow it. If you vote yes, the door will be open for
7 more applications for existing restaurants to adjoining
8 spaces.

9 This is not just adding more tables and chairs,
10 this is eliminating 2,029 square feet of previous retail
11 space. In the past this would have been abhorrent to even
12 consider, but you know, these are changing times. In the
13 past it would have been required to add sprinklers for
14 safety and health reasons and to merge the parcels, but not
15 in this case; we only did that in the past. Instead we are
16 rewarding the applicant, and for what, to add another
17 restaurant façade to Eatery Row?

18 At peak hour calculation, three persons to a car,
19 plus employees, will bring 13 more cars per hour to our town
20 and lots. No mitigation fee will offset this. When the new
21 restaurant at Chart House opens soon, again, we will be
22 beset with massive parking-hour parking problems again,
23 especially when they shut down their parking lot and develop
24 it for housing. Have you heard that one yet?

25 This landlord is setting us up to approve what
down the road could be a freestanding restaurant with

1 kitchens called "food prep areas." It is our own fault. He's
2 right. Other people have got it, and it's our fault that he
3 is even attempting this application. He only wants his due
4 and he's doing nothing wrong. We emboldened him to do this
5 as others have been allowed to massively intensify the
6 central business district.

7 We approved the loss of almost 5,000 square feet,
8 contrary to what our General Plan says we should do, for
9 wine shops, delis, and personal services last year alone, so
10 why shouldn't Vittoria get theirs? We allowed James Randall
11 more seating, beer and wine, and extended hours, so why not
12 more seating for James Randall?

13 I'll tell you why not. Not just because our
14 General Plan says that the primary activity of the CVD
15 should be retail, but because this loss of space is
16 undermining our credibility as a unique retail location, and
17 we are suffering the consequences. We are losing our unique
18 shopping street.

19 In addition to this, there are already on this
20 side of the street, on this side of the street only, ten
21 facades with restaurant CUPs, but two more upstairs, and
22 this would make 13 out of 26 locations. Get the numbers?
23 Fifty-percent. Thank.

24 CHAIR TALESFORE: Thank you, Mr. Arzie. Does
25 anyone have questions of the speaker? Seeing none, thank
you. One more speaker card. Citizen Ray.

1 RAY DAVIS: As always, I believe that Mr. Arzie
2 makes a very valid argument based on the appropriate and
3 applicable public documents. His testimony hits the nail on
4 the head, so I would urge you to give it your consideration.

5 I also want to expound a bit on this Staff Report.
6 Now you heard Mr. Tsuda make it a case to you that he and
7 the Staff had adjudicated this issue amongst themselves and
8 with the developer, and have decided to recommend approval.
9 Can you believe it? Collusion. Collusion with the developer,
10 and the Staff goes on the record as supporting it.

11 And I want to tell you, when I first came here six
12 years ago the Town Code said no recommendations from the
13 Planning Director. The Planning Department was to be
14 neutral, and the Planning Commission would do the
15 adjudication. That's the law in the state of California,
16 land use law as I understand it, and so did the Town.

17 In the meantime, that citation and code has
18 disappeared. I made all the meetings generally. I don't
19 remember any discussion about taking that out, but it's no
20 longer there.

21 But I also, in my research, established the fact,
22 there's not a word in the Code that recommends Mr. Tsuda, or
23 Mr. Lortz, or the City Manager, make any recommendation to
24 anybody. They are exceeding their authority in recommending
25 anything, particularly approval. So you know, Los Gatos
values are going to the wall on these issues. We are going

1 to take on what I call the CCC. You know, that used to be
2 the Civilian Conservation Corp back in earlier days. Today
3 it's the Cats, Culture, Corruption. The insider real estate
4 combine of the city manager and the city employees that are
5 stealing our community, and it will stop if honesty and
6 integrity means anything.

7 You've seen what's happened in San Jose. The mayor
8 says no more lying, no more cheating, and no more stealing.
9 This is going to happen here in Los Gatos. And how come
10 you're not on TV tonight. The Town Council voted last month
11 that this month you're supposed be on TV, so I'm asking that
12 question. Why aren't you on TV tonight?

13 CHAIR TALESFORE: It will happen sometime in the
14 spring.

15 RAY DAVIS: Oh, it's been put off till the spring.
16 Oh yeah, that's the way the bureaucrats kill it.

17 CHAIR TALESFORE: Thank you, Mr. Davis. Okay,
18 would the applicant please come back up?

19 SAL GIOVANNOTTO: I'm really embarrassed to go
20 through this. Just it's embarrassing.

21 CHAIR TALESFORE: Mr. Giovannotto, this is the
22 process and we're here to work with you, provide some
23 guidance. We want to see you be successful with your
24 application. We have the Town, as I think you do, at heart,
25 and we are looking out for its residents and this is the
process, so please don't be embarrassed. Would you like to

1 rebut anything that was addressed by anybody from the
2 audience or a commissioner?

3 SAL GIOVANNOTTO: I don't think I have anything. I
4 will answer any questions.

5 CHAIR TALESFORE: You just want to answer
6 questions then?

7 SAL GIOVANNOTTO: I'll be glad to, and like I
8 said, I'm just confused.

9 CHAIR TALESFORE: Okay, thank you. Commissioners,
10 do you have any questions of Mr. Giovannotto? Seeing no
11 questions, all right, well thank you. You can sit down and I
12 think that we're going to discuss this part of the
13 application, which is the restaurant expansion. Now is that
14 what I understood we decided to do? And I will close the
15 public hearing now at this point and then we'll call you
16 back up.

17 SAL GIOVANNOTTO: Thank you.

18 CHAIR TALESFORE: Okay, Commissioners, this would
19 be the time that we would go ahead and discuss the
20 restaurant expansion, so I'll start with Commissioner Kane.

21 COMMISSIONER KANE: I guess I have a question for
22 Staff, Mr. Tsuda, what advice would you have for a
23 commissioner who reads Ordinance 2021 that says in black and
24 white, "This ordinance intends to discourage the
25 displacement of retail uses by restaurant uses." This isn't
just Mr. Arzie talking about the General Plan, this is an

1 ordinance, black and white, that says don't do it. How do I
2 get by that?

3 RANDY TSUDA: It's actually the uncodified portion
4 of the ordinance. It's a statement of purpose; it's not in
5 the actual code, and Mr. Korb can correct me on it, it is
6 not the portion that's actually codified into the Town Code,
7 it's a portion of the ordinance that states the Council's
8 description. But as you read it, it is clearly stated that
9 the Council was concerned about upsetting or changing the
10 mixture of uses in the downtown, that they are discouraging
11 the displacement of retail by restaurants, and that's quite
12 clear in the way you're reading that.

13 COMMISSIONER KANE: Now we approved an expansion
14 of a personal use business not too long ago, and there was a
15 great hue and cry, and from people whose opinions I respect,
16 and I discussed it with Staff and Council, et cetera. But
17 that was a judgment call, if you want to call it that, at
18 best. Here's a black and white restriction against it, which
19 goes to then support the General Plan that says retail
20 should be given primary emphasis.

21 RANDY TSUDA: And that section that we have
22 attached is intended to provide background for the
23 Commission; it is not in the Town Code per se, it is a
24 statement by the Council on their intention in adopting that
25 ordinance, but the statement is clear.

1 CHAIR TALESFORE: Thank you. I would like to hear
2 from the rest of the Commission about their feelings about
3 the ordinance and anything else. Yes, Commissioner
4 O'Donnell.

5 COMMISSIONER O'DONNELL: I personally believe that
6 the Staff does have a right to make a recommendation, so I
7 don't have a quarrel with that.

8 What I don't really understand is you don't
9 explain your recommendation. Commission Kane has stated
10 something that is fairly clear. If there are exceptions to
11 it, and if there are exceptions to it that should apply in
12 this instance, you don't discuss it. You simply tell us to
13 approve this, and I'm surprised by that, because you don't
14 tell us why. It seems to fly in the face of the intention of
15 the Council. It may be the Council doesn't mean what they
16 say, but I haven't heard from Staff why we should approve
17 this. I'd appreciate hearing.

18 RANDY TSUDA: In the Staff's analysis, it's a
19 judgment call; it clearly is. This is where we look at the
20 entire application; a portion of it is being converted to
21 restaurant. On the other hand, these are spaces when we
22 heard the testimony on a previous application for this
23 building; the problem in leasing the space was the width of
24 the tenant spaces. In this application it's increasing the
25 width of one of the retail space. Eliminating those
substandard width retail spaces and combining the other

1 space with the restaurant, it does address the leaseability
2 question of that retail space and in the context of the
3 downtown we felt it was minimal impact to the streetscape.

4 CHAIR TALESFORE: Do I have any other comments or
5 discussion? Commissioner Rice.

6 COMMISSIONER RICE: If we're going to expand the
7 width of the building to make it better as a restaurant,
8 would that not also make it better as retail space?

9 RANDY TSUDA: The existing restaurant space is
10 fixed. What we're talking about is the building (inaudible).

11 COMMISSIONER RICE: I understand that, but I'm
12 having a tough time with the answer that you gave to
13 Commissioner O'Donnell's question, that the proposed use
14 will not impair the character of the zone, and that the
15 proposed uses of the property are in harmony with the
16 various elements or objectives of the General Plan and the
17 purposes of the Town Code. You're saying that in order to
18 make the restaurant viable we have to widen the space, and I
19 would flip it the other way and say by widening the space
20 you make it better from a retail perspective too. If I'm
21 going to displace something, I'd rather displace the
22 restaurant for the retail than the retail for the restaurant
23 is what I'm getting at.

24 RANDY TSUDA: Correct. We heard testimony on that
25 space last year that expressed the opinion that it was a

1 substandard retail space because of its unusual width and
2 extreme depth.

3 COMMISSIONER RICE: I understand that, and tonight
4 we're hearing testimony that it's substandard for a
5 restaurant because of the width.

6 RANDY TSUDA: I think you're hearing testimony
7 from both sources that when you look at all three spaces in
8 totality, when there are three spaces they're all
9 substandard in width.

10 COMMISSIONER RICE: Okay, I'm good for now. Thank
11 you.

12 CHAIR TALESFORE: Does anyone else have a
13 discussion point or questions of Staff?

14 ORRY KORB: Before you begin your discussion, I
15 just wanted to respond to one statement that was made by a
16 speaker. I made the same statement to the Council when the
17 same complaint was addressed to the Council about
18 recommendations. The Town Staff Reports have for years
19 included recommendations to both Council and to the Planning
20 Commission. I've been here for close to ten years now and
21 they've always made recommendations. The form of the
22 recommendations have varied over the years, but if there's a
23 standard and a tradition in the Town regarding Staff
24 Reports, it is to make recommendations.

25 Also it is very common in other jurisdictions that
professional staff makes recommendations. Some people would

1 argue that's what their job is. The quality of the
2 recommendation of course could always be questioned, but
3 nevertheless, the professional staff is in the position of
4 doing that for decision-making bodies.

5 And the last and most important point, there's
6 nothing in the law that prohibits professional staff from
7 making the recommendation to a deciding body, which has the
8 discretion to accept or reject that recommendation.

9 CHAIR TALESFORE: I have a question of Staff. In
10 your opinion would you think that the Architecture and Site
11 has met the Guidelines that we are bound by and that so
12 influence us, especially if I cited, if we're talking about
13 a corporate entity, page ten, "The Town will work with
14 applicants to adapt critical functional features of
15 prototype plans," blah, blah, blah?

16 ORRY KORB: I'll answer the question. This is a
17 matter that I've discussed with various Council members over
18 time and with planning commissioners.

19 When you have a policy that has been adopted in
20 the form of either a resolution or an ordinance, and let's
21 just say you have a policy, that policy is directive, based
22 on its language of course, but it's a direction of some form
23 to all of the lower boards and commissions, to applicants,
24 and to Staff. You are bound to follow that policy. Council
25 can vary from that policy by amending or modifying or making
an exception to that policy in the same form that they made

1 the policy. If they adopted the policy by recommendation,
2 they can adopt an amendment by recommendation, they can make
3 an exception by...well, resolution, excuse me.

4 But nevertheless, you as a lower body are bound by
5 the language of the policy. The policy in question here that
6 I believe Chairperson Talesfore is asking about is the
7 language and guidelines concerning materials used in
8 exterior improvements in the downtown area. It says avoid
9 metal. It says that. I think that's directed to the Planning
10 Commission. I think that is a statement to the Planning
11 Commission and to applicants and to Staff that metal
probably shouldn't be used in an application.

12 Under those circumstances I would find it, if I
13 were in your position, difficult to approve an application
14 that includes metal. I think you would have to stretch to
15 explain why you would be approving one that includes metal.
16 Council again can vary from that policy. You can't. It's
17 just a question of how you read the rules.

18 CHAIR TALESFORE: Thank you very much. Let's
19 continue then. Let's talk at the first issue, which is
20 restaurant expansion. Commissioner O'Donnell.

21 COMMISSIONER O'DONNELL: I guess I'd like to make
22 two points. One is if we were to deny the CUP application,
23 I'm not sure we'd get into the Architecture and Site
24 approval, which I wouldn't want to get into because we don't
25

1 know what they're going to do with this space. The liquor
2 license is another issue.

3 To me, I feel prohibited from putting too much
4 weight to a very reasonable request. I don't quarrel with
5 the applicant, however the Town has made the decision, at
6 least as I understood it, that we're losing a lot of space.
7 This is 1,900 square feet of retail space that we're going
8 to kiss off. And Mr. Arzie has repeatedly made, I think, a
9 very, very good point, that we don't have that much space
10 that we can just keep getting rid of it. That's what the
11 Town Council has told us. If they don't want to do what they
told us, that's fine, that's their job. They get elected.

12 But I for one feel constrained by that policy, not
13 to argue with the logic. They may be right. They're taking
14 it to Council. Let the Council tell them. But I don't think
15 we ought to be telling the Council, "Your policy is wrong
16 and we're not going to pay any attention to it."

17 So I just want to say that my view is I don't know
18 why this is before us, I don't know why the Staff
19 recommended approval. I am very, very surprised not that the
20 Staff would make a recommendation, I invite their
21 recommendation, but for goodness sake, you make a
22 recommendation against the policy of the Town, or at least
23 what I perceive to be a policy of the Town, you might give
24 us a clue on why. If you look at your recommendation, there
25 is no clue. I don't understand that. Thank you.

1 CHAIR TALESFORE: So Commissioner O'Donnell has
2 expressed that there's no compelling reason at this point to
3 be in favor of the restaurant expansion. Could I have other
4 comments or a motion from Commissioners, please?
5 Commissioner Bourgeois.

6 COMMISSIONER BOURGEOIS: I second Commissioner
7 O'Donnell's concerns that not only do we have the loss of
8 retail space, but I think we also have a loss of retail
9 diversity. We're going from three storefronts to two, so in
10 addition to losing the space, we're losing the diversity of
11 the retail experience.

12 And I've also heard in previous testimony that it
13 wasn't just the orientation, but it was also just the sheer
14 square footage was prohibited for the type of mom and pop
15 retail that we like to see. We have policy discouraging
16 formula retail, and I think by creating a larger retail
17 space, we are creating a space that's going to be more apt
18 to be occupied by a formula retail. So I'm prepared to make
19 a motion for denial of the use, unless you want to hear
20 comments.

21 CHAIR TALESFORE: Well why don't you make the
22 motion and then we can have more discussion after.

23 COMMISSIONER BOURGEOIS: So I move to deny
24 Conditional Use Permit U-07-09, the portion of it that
25 pertains to allowing the expansion of the existing
restaurant use into 25 North Santa Cruz Avenue for the

1 reasons I previously stated, and for the fact that I cannot
2 make the findings that this does not impair the integrity of
3 the zone, that there's already a lot of restaurants on that
4 block, and that it goes against the purposes of the Town
5 Code, and I think that's exemplified in Ordinance 2021. When
6 you read the intent of the Council behind the ordinance, it
7 specifically says, "Discourage the displacement of retail
8 use by restaurant use in the C-2 zone."

9 CHAIR TALESFORE: Right. Although that's not a
10 code, but you mean the ordinance.

11 CHAIR TALESFORE: I said the purpose. The finding
12 says the purposes of the Town Code, and they're expressing
13 their intent.

14 CHAIR TALESFORE: All right. Thank you.

15 COMMISSIONER RICE: And I second.

16 CHAIR TALESFORE: Okay, Commissioner Rice seconds.
17 Do we have any discussion? We have a motion on the floor to
18 deny the restaurant expansion. No discussion. Okay, then
19 I'll call for the motion. All in favor? Opposed? 7-0.

20 ORRY KORB: Before we go to appeal rights, you
21 still have Architecture and Site Application S-07-12 to
22 dispose of. I would guess what the disposition will be, but
23 you need to do that formally.

24 CHAIR TALESFORE: What about the alcohol policy?
25 We were going to do that second.

1 ORRY KORB: You need to deal with that as well and
2 you need to deal with the A&S application.

3 CHAIR TALESFORE: Thank you.

4 COMMISSIONER O'DONNELL: Can I ask a question?

5 CHAIR TALESFORE: Yes, you may.

6 COMMISSIONER O'DONNELL: I'd like to hear from the
7 applicant, because the applicant just told Commissioner
8 Bourgeois that were we to deny this, he would close the
9 restaurant. I'd kind of like to know whether, in light of
10 the fact that he's going to close the restaurant, whether
11 this liquor license issue is alive.

12 ORRY KORB: He has not pulled his application. You
13 have it pending before you and subject to a public hearing.
14 I think you need to decide it at this point in time.

15 COMMISSIONER O'DONNELL: Or we can take him at his
16 word. I'm just giving him an opportunity to change his mind.

17 CHAIR TALESFORE: Tom, just because it's in front
18 of us, and because I'd like it to have a full hearing with
19 reasons, let's just take what's in front of us.

20 ORRY KORB: Maybe I can provide a point of
21 clarification for the Commission, just to make sure you
22 understand. The reason that the alcohol aspect of the
23 Conditional Use Permit is before you is because assuming the
24 that CUP was approved to expand the restaurant, then along
25 with the restaurant use would be the already approved
alcohol use in the smaller site that would be expanded to

1 the larger site. (Aside to someone.) Excuse me? I'm sorry, I
2 didn't realize that we have a full liquor application as
3 well. You should hear him on that question.

4 CHAIR TALESFORE: Okay. Commissioner Micciche.

5 COMMISSIONER MICCICHE: His point is well taken.
6 That comment was made. I think we ought to give the
7 applicant an opportunity to either confirm that or change
8 his mind before we take action on either one of these.

9 ORRY KORB: Yes, and I apologize, because I was
10 thinking about the expansion of the alcohol (inaudible).

11 CHAIR TALESFORE: All right, we can call him back
12 up?

13 ORRY KORB: You can.

14 COMMISSIONER MICCICHE: You can open the hearing.

15 CHAIR TALESFORE: I can open the public hearing to
16 answer a question, and Mr. Giovannotto, would you please
17 join us up here. Okay, Mr. Giovannotto, I think we have a
18 question from the Commission, and Commissioner O'Donnell,
19 would you like to ask that?

20 COMMISSIONER O'DONNELL: My understanding is you
21 closed the public hearing on the first item, which we voted
22 on. You have not closed the public hearing on the other two
23 items. I just think in a sense of fairness, since we are
24 next going to consider the liquor license and we haven't
25 closed the public hearing, that he be given an opportunity.
He's told us he's going to close the restaurant if we don't

1 approve this, and we haven't approved it. He's got his
2 appeal rights; maybe the Council will. I would just like to
3 know whether he really wants a liquor license for the
4 smaller restaurant in the event that he doesn't get the
5 restaurant. So I just want to give the man an opportunity to
6 (inaudible).

7 CHAIR TALESFORE: Thank you for repeating that.
8 Yes, so Mr. Giovannotto.

9 SAL GIOVANNOTTO: It's hard for me to answer the
10 question. We not are going back to whatever you denied. I
11 want to make sure you understand, this is the fourth time I
12 come here in three years, and I've been denied all the times
13 and the place is still boarded up. So in answer to your
14 question, no I don't need your liquor license. You keep it.
15 I've been discriminated. You know, I know, and we will go
16 forward from this. Everybody has been approved except me. It
17 doesn't matter what I do. That's fine. That's the way you
18 like it, thank you very much. I appreciate. Your answer is
19 no, I don't need a liquor license for a small place. There's
20 not even room to sit there. What would I do with a liquor
21 license? Thank you.

22 CHAIR TALESFORE: Okay, we heard the testimony
23 from the applicant. Do we have discussion on that?
24 Commissioner Rice.

25 COMMISSIONER RICE: That was my question. Mr.
Korb, does that constitute a withdrawal of the application?

1 ORRY KORB: I would prefer to ask him that
2 question directly and have him place that on the record. Mr.
3 Giovannotto, can you come back to the stand for a minute?

4 SAL GIOVANNOTTO: (Inaudible).

5 ORRY KORB: My recommendation is that you vote on
6 a recommendation to Council on the application.

7 CHAIR TALESFORE: I would want to do that as well.
8 It's in front of us and that would be my suggestion, but let
9 me hear from the rest of my commissioners. Commissioner
10 Rice.

11 COMMISSIONER RICE: I move we deny the alcohol
12 service portion of the Conditional Use Permit Application U-
13 07-09.

14 CHAIR TALESFORE: Do I have a second? Can you make
15 the findings?

16 COMMISSIONER RICE: Isn't that just a
17 recommendation to Council?

18 CHAIR TALESFORE: Oh, it's a recommendation. I'm
19 sorry, yes, excuse me.

20 COMMISSIONER RICE: And I'll clarify that the
21 recommendation is based on the applicant's comments that he
22 doesn't need the liquor license for a small restaurant.

23 CHAIR TALESFORE: Thank you. Discussion?
24 Commissioner O'Donnell.

25 COMMISSIONER O'DONNELL: May I ask you to add to
that? I agree with you. I think the man has withdrawn it,

1 but fine. But also we haven't had any evidence as to whether
2 the liquor license would be a good idea in a smaller
3 restaurant. The only testimony we've had is everybody bumps
4 into everybody. And then the question becomes do you really
5 want a liquor under those circumstances? And we've asked the
6 gentleman to put some evidence on the record. He's refused
7 to do that. So I want to make sure the record reflects that
8 not only has he withdrawn it, but he's refused to put any
9 evidence on the record. So if you would agree with that I
10 think we have a better record.

11 COMMISSIONER RICE: Absolutely.

12 CHAIR TALESFORE: I would also agree. If that
13 could be reflected in the minutes? Thank you. Do we need to
14 have Mr. Tsuda read the motion back to us? I don't think so.
15 Okay, I'll call for the motion. All those in favor of denial
16 of application for the liquor license, and that would be
17 Conditional Use Permit U-07-09, say aye. Those opposed?
18 Seeing none, the motion carried 7-0.

19 Next on the agenda is the discussion of the
20 Architecture and Site. So that would be, in this case, I'm
21 seeing it as building #23, and then building #25, which
22 would be the outdoor patio.

23 COMMISSIONER O'DONNELL: I don't see how we can
24 approve an application for a building that does not exist,
25 or if you're correct, will exist. Therefore the proposal
doesn't fit the facts, so if somebody wants to make a

1 motion, I guess that's your basis for it. I'll make a motion
2 that we deny it on the basis that there is nothing pending.
3 We have denied the application to create the space, which
4 has now been designed. That being the case, the design is
5 inapplicable. The design is inapplicable to reality and
6 should be denied.

7 CHAIR TALESFORE: Do I have a second?

8 COMMISSIONER MICCICHE: I'll second.

9 CHAIR TALESFORE: Okay, second by Mr. Micciche,
10 and could I have some discussion on that? Commissioner Kane.

11 COMMISSIONER KANE: I'll probably support the
12 motion. I wanted to get into what I thought maybe Mr. Tsuda
13 was saying, and notwithstanding what Counsel said, that the
14 guidelines, the standards that we are given; the key words
15 are "avoid metal." And you know I like to take words like
16 that and say, "Well that means no metal." Well it doesn't
17 say no metal, it's avoid metal. And what I'm thinking is if
18 a certain tenant like Jimmy's Robots were to come in, maybe
19 some kind of a metal fabrication storefront would be
20 appropriate and wouldn't offend the neighborhood. Do you get
21 my gist? I know you're winking at me. We're all winking at
22 each other. This is silly. If that's what the tenant needs,
23 I will reconsider for the benefit of the Town. Am I being
24 reasonably clear?

25 CHAIR TALESFORE: For what? What are you going to
reconsider?

1 COMMISSIONER KANE: Well the applicant wanted
2 metal, and there might be a reason for that, and I'll wait
3 until such time that that comes up, but I'm not shooting it
4 down just because it says avoid metal. I want to keep it
5 open as to what might be best for the Town.

6 CHAIR TALESFORE: I think it's more than just the
7 metal, but anyway, Commissioner Rice.

8 COMMISSIONER RICE: I'll support the motion, but
9 Commissioner Kane, what I'm hearing you say is that turning
10 this down in its present form doesn't mean that you're not
11 open to it. I'm not saying I'm not open to something similar
12 in the future, but it's difficult to approve something that
13 is discouraged in the Guidelines without a more concrete
14 proposal.

15 CHAIR TALESFORE: Thank you, and I would agree
16 with that, Commissioner Rice, as well. You know, we hear the
17 name Apple being bandied around, that's what I've been
18 hearing out there, and it would matter that whatever brand
19 it might be that we don't want to ever give up an
20 opportunity to work with a corporate to come in nicely in
21 partnership to fit into our town certainly, and I don't
22 think that that is what this A&S reflects. It reflects the
23 fact that we don't have an identified tenant and are asking
24 to absolutely divert ourselves and divest ourselves from the
25 Guidelines. So I'm going to call the question. All those in
favor of supporting the motion to deny Architecture and Site

1 S-07-12, may I hear it now? Those opposed? None. It carries
2 7-0.

3 ORRY KORB: Appeal rights. You have two separate
4 applications and each is handled differently. Regarding
5 Architecture and Site Application S-07-12, anyone
6 dissatisfied with the decision of the Planning Commission
7 may appeal the decision to the Town Council. The appeal must
8 be filed within ten days and must be filed upstairs in the
9 Clerk Department. There is a fee for filing an appeal.

10 Regarding Conditional Use Permit U-07-09, the fact
11 that the alcohol application component is a recommendation
12 to Town Council means that the application will be carried
13 over to the Town Council for final action. It's a de novo
14 hearing, so the remainder of the issues included within that
15 conditional use permit application will also be available
16 for decision by Town Council.

Date: January 10, 2007
For Agenda Of: January 10, 2007
Agenda Item: 1
DESK ITEM

REPORT TO: The Planning Commission
FROM: Director of Community Development
LOCATION: 23-27 N. Santa Cruz Avenue
Architecture and Site Application S-07-12
Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

DEEMED COMPLETE: December 4, 2006

FINAL DATE TO TAKE ACTION: June 4, 2007

EXHIBITS: A.-N. Previously received
O. Letter from Chamber of Commerce (two pages with four page attachment), received January 5, 2006
P. Revised floor plan (one sheet), received January 9, 2007
Q. List of Restaurants located in C-2 Zone and Map
R. Letter from Bill & Karyn Friend (one page), received January 10, 2007
S. Letter from Kevin Crafford (one page), received January 10, 2007
T. Letter from Valerie Kwiatkowski (one page), received January 10, 2007
U. Excerpt from Commercial Design Guidelines—District C-2A (six pages)

REMARKS:

Additional Information:

As requested by Chair Talesfore, Exhibit Q is a map showing locations of alcohol serving establishments in the Downtown. A spreadsheet listing all businesses with an alcohol license is also attached. The Commercial Design Guidelines pertaining to the C-2A District have been attached as Exhibit U as suggested by the Chair.

Applicant's Request:

The applicant would like the flexibility to have up to three small tables in the outdoor patio area

when weather permits. Exhibit P is a revised site plans showing the proposed layout. Staff recommends that condition 9 be modified as follows:

SEATS. The maximum number of seats is 84, inclusive of any seating placed in the outdoor patio.

In addition, it is recommended that the following condition be added:

OUTDOOR FURNITURE. Outdoor furniture shall be of high quality materials and appearance to the satisfaction of the Community Development Director (plastic furniture is not allowed).

Correspondence:

Exhibit O is a letter regarding a survey of Downtown merchants relative to the proposed expansion of Vittoria restaurant. The Los Gatos Chamber of Commerce submitted the information for the Planning Commission's consideration.

Exhibits R, S and T are letters of support that were received following distribution of the packet.



Prepared by:
Suzanne Davis, Associate Planner



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

BNL:SD:mdc

TOWN OF
Los Gatos
CHAMBER OF COMMERCE

Patti Rice-President
The Spa-Los Gatos

Brenda Hammond
President Elect
Restaurant James Randall

Erika Brown
Private Mortgage Advisors
Susan Combs-Bauer
BauerCombs Landscape Architects

Rich Diaz
Entrabase

Mollie Drake
Los Gatos Meadows

Gary Honts
*Community Hospital
of Los Gatos*

D. Michael Kane
Kane Financial Group

Kevin Kelly
Charles Schwab

Blaine Kingsbury, D.C.
Community Chiropractic

Bill Leonard
Ignite Marketing

Keith Plottel
*LMGW Certified Public
Accountants*

Janice McCabe
Janice McCabe Interiors

William Seligmann
*Law Offices of
William R. Seligmann*

Pam Snowden-Abella
Heritage Bank of Commerce

Susan Stevens
Hotel Los Gatos & Spa

Greg Stowers
Stowers Associates Architects

Keely Strong
California Cafe

Marie Tallman
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The Sereno Group**

January 4, 2007

To the Planning Commission and the Town Council of Los Gatos

Re: Modifications for Vittoria Restaurant

RECEIVED

JAN - 5 2006

TOWN OF LOS GATOS
PLANNING DIVISION

In March 2006, the Los Gatos Chamber of Commerce invited merchants whose businesses were located in the downtown corridor (University Ave., Main Street and North Santa Cruz Avenue) to participate in an email committee. The purpose of this new "Downtown Committee" was to inform and educate the business community on issues, ideas and business practices that are pertinent to them and to obtain feedback from them on those issues that directly impact the downtown community.

The Chamber uses this feedback to report opinions to the Planning Commission and Town Council on pending issues to assist you in making your decisions. The feedback is coordinated by the Chamber but the opinions sent to the Council and Planning Commission are those of the business owners and not of the Chamber. It should also be noted that there is no limitation of Chamber membership for this group and it is open to the entire downtown business community. The group has been assured that none of their names will be used without their express permission to do so. The Chamber intends to send the information gathered to the local newspaper in the form of a letter to the editor so the merchants voices are heard throughout the community on issues that directly affect them.

An email was sent to the Downtown Committee regarding Vittoria Restaurant's request for modification of its Conditional Use Permit. A copy of the information sent and the questions sent to the committee are attached to this letter. Only eight businesses responded but their opinions are as follows:

1. How do you as a downtown business owner feel about the expansion of the restaurant?
Favor: 5 Against: 2 No response: 1
2. Full liquor license or remain beer & wine only:
Full liquor license : 4 Beer & Wine only : 3 Don't care: 1
3. Will creating a "street café" feel be positive for N. Santa Cruz Ave.?
Yes: 6 No: 2
4. Will this application increase the draw of people to the downtown?
Yes: 4 No: 3 Don't know: 1
5. Are you concerned over the loss of retail square footage to restaurant use?
Yes: 3 No: 4 No Answer: 1
6. Would a national tenant be appropriate in the space (23 & 25 N. Santa Cruz)?
Yes: 4 No: 2

There were numerous comments attached to the surveys. They are included for your consideration.

"It would be better to (to have a national tenant) than leaving it empty for another year!"

"While I am concerned about the retail spaces decreasing, I think much consideration needs to be given to the composition of the spaces in question. These buildings are long and narrow—definitely not ideal for a typical retailer—especially considering how many square feet are involved. If the three areas can be proportioned to better allow an overall use, I say go ahead. The space has been vacant a long time—and it certainly isn't productive to let it continue to sit unoccupied when the current plan isn't detrimental to the current business mix."

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Center
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The Sereno Group**

Vittoria CUP continued:

"I believe that stores that serve food and beverages should be required to steam clean the sidewalks in front of the establishments at least once a week. I also believe that it is necessary for a restaurant to have a full service liquor license in order to be profitable. However, I don't believe we need another alcohol serving restaurant in Los Gatos. The damage done to our store by drunks is staggering.....Maybe the businesses that sell or provide liquor should provide a fund to pay for such after hours damages that are caused to the other businesses in town. I believe an Apple store would be a wonderful addition to Downtown Los Gatos. It definitely would increase the draw of quality people downtown. Anything we can do to get them out of the shopping malls would benefit us all."

"I am against liquor sales...except for beer and wine...A national store can be a plus. Too bad they aren't adding the (restaurant) seating in the back rather than the front. "

"I would be opposed to hard liquor if it was going to be another bar. I would propose that the converted square feet have some parameters set to enforce the "street café" look as indicated in the application. I think 44% of retail occupancy sounds good and the transition of this square footage won't negatively impact the current ratio. I do think restaurants are a HUGE draw of business to our downtown. Also, by reducing the size of the current retail space it may be easier to attract a local tenant, which seems to be desired based on previous responses about chain stores in the space. I think this could be a good compromise so that the property owner can rent the space and we won't have that huge empty space right in our downtown core, but still have plenty of retail space available."

"We are slowly seeing the decline of locally owned "mom & Pop" shops in the downtown area. It is because of landlords like this! He had 2 great tenants which were forced out. Now he just wants a national that will pay him \$\$\$\$ /square foot. I can't tell you how many people come and shop in my store because they want to support an independent retailer. We do not want to see an outdoor "Valley Fair" in historic downtown Los Gatos!"

Respectfully submitted by:



Patti Rice
President, Los Gatos Chamber of Commerce

Downtown Committee

Hello Downtown Committee –

On Wednesday, January 10th, **Vittoria Restaurant** will be going before the Planning Commission with a request for modification to their existing Conditional Use Permit and an Architectural and Site Application for modifications to the façade of their building.

About the Application:

Public notices, including property owners and tenants, were sent out for the December 13, 2006 Planning Commission meeting for the Vittoria applications. At that meeting, the applicant requested that the Commission act on the Architecture & Site application for changes to the facade of the building and continue the Conditional Use Permit application to January 10, 2007.

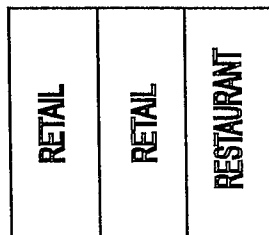
The facade improvements include the Vittoria space and the space that Apple wants to occupy. The Commission did not want to bifurcate the applications, and also felt it was not appropriate to approve modifications to the building's exterior without approval of a discretionary use, so the matter was continued to January 10, 2007.

The CUP modification includes two requests: (1) to add 24 seats and expand the floor area of the restaurant, and (2) to upgrade the beer and wine license to a full liquor license. Since alcohol is involved, the Commission will be making a recommendation to the Council as the deciding body.

The Council meeting will likely be in February 2007. The January 10 PC meeting will not be re-noticed as it is a continued public hearing.

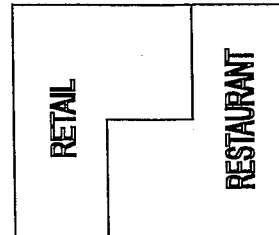
This application will convert existing retail square footage and convert it to restaurant use. The application requests to increase the street frontage of the restaurant for the dining room. The intent is to give the restaurant more of the feeling of a street café. Currently Apple Computer is the proposed tenant for the enlarged retail space, but they will need to be approved through the CUP process. The following diagram is intended to help you understand the layout of the proposed application:

EXISTING LAYOUT



N. Santa Cruz Ave

PROPOSED LAYOUT



N. Santa Cruz Ave

Downtown Committee

Other Pertinent Information:

Much of the discussion to date about this application is concerned over the conversion of the retail square footage to restaurant use and the need to keep a healthy ratio of restaurants, retail and personal service businesses. The following data was collected from a field survey conducted by CDD staff on March 27, 2006:

There are approximately 574 total businesses and 321 ground floor tenant spaces in the C-2 zoning district. Currently within this district's ground floor businesses, there are 141 retail businesses, 60 personal service businesses (31 hair care, 14 nail care and 10 skin care), 51 restaurants and 71 offices. Represented as a percentage, it is as follows:

Business Type	Number	Percentage
Personal Service	60	18%
Restaurants	51	16%
Office	71	22%
Retail	141	44%
Total	321	100%

Questions:

The Chamber of Commerce would like to hear your comments so that we can pass this information along to the Planning Commission and Town Council. The following are some questions that are focusing on the issue of the modifications to the CUP and the expansions of the restaurant. Additionally, we have included some questions regarding the larger issue of the overall mix of retail vs. restaurants in the downtown core.

When replying, please consider the potential impacts to surrounding businesses and residents both positive and negative.

1. How do you, as a downtown business owner, feel about the expansion of this restaurant?

For _____

Against _____

2. How do you feel about the addition of a full liquor license to the restaurant?

For _____

Against _____

3. Will creating a "street café" feel to the restaurant be a positive impact to North Santa Cruz Avenue?

Yes _____

No _____

Downtown Committee

4. Do you believe this application will increase the draw of people to the downtown?

Yes _____

No _____

5. Are you concerned over the "loss" of retail square footage to restaurant use?

Yes _____

No _____

6. Typically we are seeing the larger square footage retail spaces in the downtown being occupied by national stores. Would a national tenant in this retail location be appropriate?

Yes _____

No _____

Additional Comments:

Name: (optional) _____

Please return your response by Wednesday, January 3rd to allow for tabulation of the answers and conveyance to the Planning Commission. Remember, the opinions we will give to the Town will be yours, not those of the Chamber of Commerce.

Thank you for your continued support and participation.

Fax: 408-399-1594

E-Mail: ronee@losgatoschamber.com

Mail: Chamber of Commerce 349 N. Santa Cruz Ave., Los Gatos CA 95030

TOWN OF
Los Gatos
CHAMBER OF COMMERCE

Patti Rice-President
The Spa-Los Gatos

Brenda Hammond
President Elect
Restaurant James Randall

Erika Brown
Private Mortgage Advisors
Susan Combs-Bauer
BauerCombs Landscape Architects

Rich Diaz
Entrabase

Mollie Drake
Los Gatos Meadows

Gary Honts
*Community Hospital
of Los Gatos*

D. Michael Kane
Kane Financial Group

Kevin Kelly
Charles Schwab

Blaine Kingsbury, D.C.
Community Chiropractic

Bill Leonard
Ignite Marketing

Keith Plottel
*LMGW Certified Public
Accountants*

Janice McCabe
Janice McCabe Interiors

William Seligmann
*Law Offices of
William R. Seligmann*

Pam Snowden-Abella
Heritage Bank of Commerce

Susan Stevens
Hotel Los Gatos & Spa

Greg Stowers
Stowers Associates Architects

Keely Strong
California Cafe

Marie Tallman
Backyard Wineries



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Los Gatos Meadows**

Bronze Sponsor
**Hotel Los Gatos & Spa
Los Gatos Foot & Ankle
Center
FedEx Kinko's-Los Gatos
The Sereno Group**

December 29, 2006

Happy New Year to everyone.

Just wanted to remind you about the information and survey we sent out regarding the CUP that Vittoria Restaurant has coming up before the Planning Commission on January 10th. We need all responses by tomorrow, January 3.

Please note: New information has come to our attention regarding a proposed occupant of the spaces identified as 23 & 25 N. Santa Cruz Avenue. The property owners have informed us that they have not signed any tenant to the space. No discussion of the CUP that comes before the Planning Commission on January 10th should include Apple Computer as part of the equation in the CUP for Vittoria. The pending CUP application only applies to the changes in seating capacity (an increase of 24 seats) for the restaurant and the upgrade of their beer and wine license to a full liquor license. Please keep this information in mind as you answer the survey questions.

We regret any confusion we may have caused.

I am attaching another copy of the original information and questions that we sent out. Please respond either by email (ronee@losgatoschamber.com) or fax (399-1594).

Thanks,
Ronee

23-27 N. Santa Cruz Ave.

ATTACHMENT 4
EXHIBIT P

**COPY AVAILABLE FOR REVIEW
IN THE CLERK DEPARTMENT**

RESTAURANTS LOCATED IN ZONE: C-2					
	No.	Dir	Street	APN	Name of Business
Restaurants with Full Alcohol					
1	208		Bachman Ave	51014050	C.B. Hannegan's
2	160	W	Main Street	52903020	Valeriano's Italian Restaurant
3	8	N	Santa Cruz Ave	52803046	Carry Nation's
4	15 1/2	N	Santa Cruz Ave	51044077	180 Restaurant & Lounge
5	206	N	Santa Cruz Ave	52904089	Forbes Mill Steakhouse
6	316	N	Santa Cruz Ave	52904090	Pedro's
7	20	S	Santa Cruz Ave	51045075	Willow Street Pizza
8	140	S	Santa Cruz Ave	51045065	Toll House
9	115	N	Santa Cruz Ave	51017065	Chart House Restaurant
10	354	N	Santa Cruz Ave	52904091	Los Gatos Double D's Sports Grille
11	31		University Ave	52902044	Steamer's Grillhouse
12	50		University Ave	52902044	California Café Bar & Grill
13	50		University Ave	52902044	Wine Cellar Restaurant
14	368		Village Lane	52904053	Café Marcella Wine Bar & Restaurant
Restaurants with Beer and Wine Only					
1	42		Elm Street	52903035	Café Rouge
2	165		Los Gatos-Saratoga Ave	52904083	Baker's Square
3	235		Los Gatos-Saratoga Ave	51014074	Diner of Los Gatos
4	25	E	Main Street	52928036	I Gatti
5	29	E	Main Street	52928036	Twenty-nine East Main Café
6	49	E	Main Street	52928032	Pastaria and Market
7	101	W	Main Street	52901025	Los Gatos Roasting Company
8	6	N	Santa Cruz Ave	52803047	Andale
9	9	N	Santa Cruz Ave	51044077	Pizza My Heart
10	19	N	Santa Cruz Ave	51044068	Great Bear Coffee
11	21	N	Santa Cruz Ave	51044036	Andale
12	27	N	Santa Cruz Ave	51044033	Vittoria Ristorante
13	47	N	Santa Cruz Ave	51044030	Gilley's Coffee Shop
14	51	N	Santa Cruz Ave	51044030	Gardino's Ristorante Italiano
15	57	N	Santa Cruz Ave	51044030	Round Table Pizza
16	130	N	Santa Cruz Ave	52903044	Los Gatos Brewing Company
17	133	N	Santa Cruz Ave	51017062	Tandoori Oven
18	135	N	Santa Cruz Ave	51017062	Kamakura Restaurant
19	137	N	Santa Cruz Ave	51017061	The Green Papaya
20	217	N	Santa Cruz Ave	51017091	Shish Kebab
21	303	N	Santa Cruz Ave	51014048	James Randall Restaurant
22	330	N	Santa Cruz Ave	52904040	Transilvania European Restaurant
23	336	N	Santa Cruz Ave	52904041	Sushi Yokohama
24	337	N	Santa Cruz Ave	51014011	Thai Spice of Los Gatos
25	20	S	Santa Cruz Ave	51045075	Jasmine Restaurant
26	320		Village Lane	52904048	Manresa Restaurant
Restaurants That Do Not Serve Alcohol					
1	26	E	Main Street	52929052	Café Sienna
2	27	E	Main Street	52928036	Southern Kitchen
3	111	E	Main Street	52928006	Café de Flore
4	81	W	Main Street	52901025	Blendz
5	125	W	Main Street	52901007	Posh Bagels
6	145	W	Main Street	52901007	Le Boulanger
7	13	N	Santa Cruz Ave	51044077	TCBY/Mrs. Fields
8	35	N	Santa Cruz Ave	51044032	Powell's Sweet Shoppe
9	39	N	Santa Cruz Ave	51044032	Fleur de Cocoa
10	114	N	Santa Cruz Ave	52803063	Sushi on the Run
11	151	N	Santa Cruz Ave	51017060	Maki Yaki
12	221	N	Santa Cruz Ave	51017091	Dolce Spazio
13	340	N	Santa Cruz Ave	52904042	Los Gatos Café
14	20	S	Santa Cruz Ave	51045075	Cold Stone Cremery
15	20	S	Santa Cruz Ave	51045075	Main Street Burgers
Non-Restaurant Establishments That Sell Alcohol					
1	211		Los Gatos-Saratoga Ave	51014009	Village Liquors
2	32	E	Main Street	52929052	The French Cellars
3	45	W	Main Street	52901026	Backyard Wineries
4	140	W	Main Street	52903018	Opera House
5	15	N	Santa Cruz Ave	51044077	Mountain Charley's Saloon
6	141 1/2	N	Santa Cruz Ave	51017061	Black Watch
7	102	S	Santa Cruz Ave	51045075	Number One Broadway

Source: California Department of Alcoholic Beverage Control



Town of Los Gatos

0 215 430 860 1,290 1,720 Feet



C-2 Zoning District



Restaurants that serve alcohol



Non-Restaurants that sell alcohol



Restaurants that do not sell alcohol

RECEIVED

JAN 7 2007

TOWN OF LOS GATOS
PLANNING DIVISION

Jan 8th, 2007

To: Community Planning Dept of Los Gatos
From: Bill & Karen Friend
165 Happy Acres Rd. Los Gatos

Dear Sirs + Madam,

We whole-heartedly support the
planned expansion of Vittoria Restaurant
on N. Santa Cruz Blvd. Vittoria is
one of the first restaurants in town
and the management & staff are
great. We look forward to their
expansion so we can get in
sooner & more often.

Bill Friend
408-438-3741

67

77

Date: January 9, 2007
From: Kenneth Crafford
To: Planning Commission, Town Council
Los Gatos, California
SUBJ: Request for Expansion – Vittoria Restaurant
27 North Santa Cruz Avenue, Los Gatos

RECEIVED

JAN 10 2007

TOWN OF LOS GATOS
PLANNING DIVISION

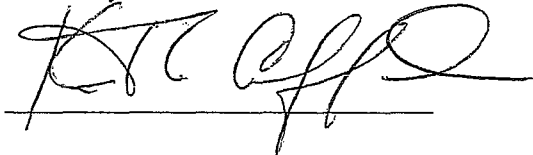
Dear Commissioners/Council:

It has come to my attention that the Vittoria Restaurant has applied for permission to expand their dining room into the space next door. I heartily SUPPORT this application.

The restaurant is a beautiful place and the service is great, but the narrow dining room and the high ceilings result in a noisy environment which detracts from the experience. If they were allowed to expand the space and provide some acoustical adjustments, the restaurant would be the kind of place we in Los Gatos are proud to patronize.

Please allow this expansion. It is an improvement everyone can appreciate.

Sincerely,

A handwritten signature in dark ink, appearing to read 'KTC app', written over a horizontal line.

Address: 16830 Sheldon Road
Los Gatos, CA

January 9, 2007

RECEIVED

JAN 11 2007

Valerie Kwiatkowski
381 Blackwell Drive
Los Gatos, CA 95032

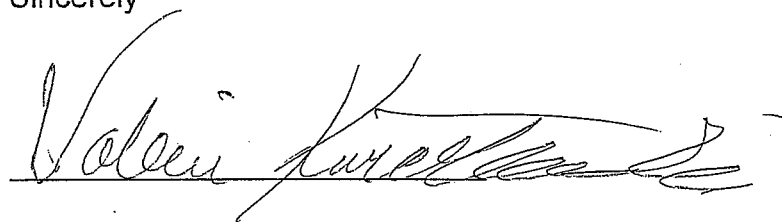
TOWN OF LOS GATOS
PLANNING DIVISION

Dear Planning Commission:

I understand that Vittoria Restaurant has applied to the Planning Commission to expand their restaurant. I am a frequent diner at Vittoria and have found it to be a delightful place. Although I think they've done a nice job accommodating such a narrow space, adding a little more width would be MUCH better! Also, their manager, Massimiliano, mentioned that right now they are forced to do all their preparation in the kitchen. The expansion would make it possible for them to have designated preparation areas, which is really a necessity for a fine dining restaurant.

For these reasons, I would ask that you please approve their application.

Sincerely

A handwritten signature in cursive script, appearing to read "Valerie Kwiatkowski", written over a horizontal line.

23-27 N. Santa Cruz Ave.

ATTACHMENT 4
EXHIBIT U

**COPY AVAILABLE FOR REVIEW
IN THE CLERK DEPARTMENT**

Date: January 4, 2007
For Agenda Of: January 10, 2007
Agenda Item: 1

REPORT TO: The Planning Commission
FROM: Director of Community Development
LOCATION: 23-27 N. Santa Cruz Avenue
Architecture and Site Application S-07-12
Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

DEEMED COMPLETE: December 4, 2006

FINAL DATE TO TAKE ACTION: June 4, 2007

FINDINGS:

- As required by Section 15303 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 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.

CONSIDERATIONS:

- As required by Section 29.20.150 of the Town Code for Architecture and Site applications.

ENVIRONMENTAL ASSESSMENT: It has been determined that this project is categorically exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

RECOMMENDATION

SUMMARY: Recommendation to Town Council.

EXHIBITS:

- A.-G. Previously received
- H. Applicant's letter (two pages), received September 15, 2006
- I. Required Findings & Considerations (four pages)
- J. Existing conditions of approval (one page)

- K. Recommended Conditions of Approval (four pages)
- L. Policy Regulating the Consumption and Service of Alcoholic Beverages (four pages) adopted by Council September 17, 2001
- M. Ordinance 2021, Review of Additional Restaurant Use in the Downtown Area (two pages), adopted by Council August 5, 1996.
- N. Development Plans (three pages), received December 5, 2006

A. BACKGROUND:

The subject applications involve three separate parcels within two buildings located on the west side of N. Santa Cruz Avenue, between Main Street and Bean Avenue. The existing restaurant, Vittoria, is currently operating within the building at 27 N. Santa Cruz Avenue. The two adjacent tenant spaces at 23 and 25 N. Santa Cruz are currently vacant, and are located in a separate building. The proposed restaurant expansion encompasses part of the tenant space at 25 N. Santa Cruz and the remainder will be combined with the space at 23 N. Santa Cruz to form one larger space for a future retail use. The Conditional Use Permit (CUP) modification also includes a request for a full liquor license in place of the existing beer and wine license.

On December 13, 2006 the Planning Commission considered an Architecture & Site application for façade improvements to the restaurant and retail spaces. The Commission expressed concern about acting on the exterior modifications prior to approval of the restaurant expansion, and continued the matter to this agenda so that the two applications can be considered together.

B. REMARKS:

The applicant is requesting to expand an existing restaurant into part of the tenant space at 25 N. Santa Cruz and to add 24 seats. In addition, the existing beer and wine license is proposed to be upgraded to a full liquor license. The remainder of the adjacent space will be combined with the space at 23 N. Santa Cruz for a future retail tenant. The existing three tenant spaces will be reconfigured into two spaces under this proposal. Façade improvements are proposed for both the restaurant and retail uses.

Architectural Review

The Town's Consulting Architect, Larry Cannon of Cannon Design Group, reviewed the plans and visited the site. The recommendations of the Consulting Architect are as follows:

23 N. Santa Cruz (retail space)

- Provide a recessed vestibule instead of a flat façade.
- Add a base of at least 12-inches below the storefront display windows.
- Provide some plane changes to the storefront to provide façade depth.

27 N. Santa Cruz (Vittoria)

- Clarify the profile of the parapet cap on the storefront.
- Clarify the intent of the elements above the restaurant doors.

The applicant is in agreement with these recommendations. Staff and the Consulting Architect can work with the applicant to make any changes required by the Commission. A condition of approval has been included to this affect.

Conditional Use Permit

A parcel merger will be done to combine the two lots comprising the building at 23-25 N. Santa Cruz Avenue into a single parcel. An easement will be required for the restaurant expansion into the space at 25 N. Santa Cruz. The modification to the CUP includes an increase in seating from 60 to 84, and a request for a full liquor license. The existing restaurant space is very narrow and will have a more functional floor plan with the proposed expansion. In addition, a food preparation area will be added to facilitate service to restaurant patrons. The applicant has submitted a letter explaining the rationale behind the requested expansion (see Exhibit H).

Parking

The Zoning Ordinance requires one space for every four seats for a restaurant without a separate bar, and one space for every 300 square feet for retail uses. There is no on-site parking, but the properties are within the Downtown Parking Assessment District and have a total of 39 parking credits to support the restaurant and retail spaces. The table below summarizes the parking demand:

Parking Analysis					
<i>address</i>	<i>use</i>	<i>square feet</i>	<i>seats</i>	<i>parking requirement</i>	<i>total spaces required</i>
27 N. Santa Cruz	restaurant	3,936	84	1 space/4 seats	21
23 N. Santa Cruz	retail	5,148	-	1 space/300 sf	17
totals			84		38

Traffic

The Town Traffic Engineer conducted a traffic analysis and determined that expansion of the restaurant would not result in a significant traffic impact. The applicant will be required to pay a Traffic Impact Mitigation Fee based on an increase in trips during the am and pm peak periods.

Alcohol Policy

The Town's Alcohol Policy requires any change in the service of alcoholic beverages to be approved by the Town Council. The request is consistent with the general policies in section II and the specific policy in section IV (see exhibit L). The restaurant is currently open until 11:00 pm daily and the applicant is not requesting to modify the approved hours of operation. The Planning Commission's recommendation on the request to change the existing beer and wine license to a full liquor license will be forwarded to the Council for final action.

Restaurant Use in the Downtown

Due to a concern about an over concentration of restaurants in the Downtown, the Town Council adopted Ordinance 2021 in 1996. This ordinance discourages the displacement of retail uses by restaurant uses and requires the Planning Commission to conduct a careful review of all applications for new restaurant uses in the C-2 zone through the public hearing process. Vittoria is not a new restaurant, but does involve expansion into space that was previously occupied by a retail use. The applicant intends to lease the remaining space to a retail use, and believes that with a successful business in that location, the restaurant expansion will not be detrimental to the success of the Downtown.

C. RECOMMENDATION:

It is recommended that the Planning Commission make the required findings and considerations in Exhibit J and approve the Architecture & Site and Conditional Use Permit applications, subject to the conditions in Exhibit K.



Prepared by:
Suzanne Davis, Associate Planner



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

BNL:SD

cc: Alex Giovannotto, Santa Cruz Real, LLC. P. O. Box 60177, Palo Alto, CA 94306
Lou Dorcich, Architect, P. O. Box 1149, Soquel, CA 95073-1149

September 14, 2006

RECEIVED

SEP 15 2006

Town of Los Gatos
Dept. of Community Development
Planning Division
110 East Main
Los Gatos, CA 95031

TOWN OF LOS GATOS
PLANNING DIVISION

**RE: Letter of Justification for Application for Conditional Use Permit for Liquor Service
and Expansion of Existing Restaurant Use at 27 N. Santa Cruz Avenue.**

Dear Town Planning Administrator,

I am the Managing Member of the Santa Cruz Real LLC, the property owner of 23, 25 and 27 N. Santa Cruz Avenue. The LLC is currently operating the Vittoria Restaurant at the 27 N. Santa Cruz location and has been previously granted a Conditional Use Permit to serve Beer and Wine with meals. We would like to upgrade the CUP to: (a) expand the size of the restaurant, and (b) include liquor service in addition to the current beer and wine service. We believe that these two modifications would greatly advance our goal of delivering a dining experience of the highest caliber to our patrons and the citizens of Los Gatos.

We have operated the restaurant in the very narrow 12 ½ foot wide remodeled space previously occupied by another restaurant called Pigalle at the referenced address. This has proven to be a less than desirable width for a restaurant space and the awkwardness of the current configuration severely restricts our ability to serve the public. In addition, the acoustics of the space cause an unusually high noise level, substantially reducing the ambiance and detracting from a quality dining experience. Lastly, in order to maximize the service to our customers in such a small area, we are forced to do all food preparation in the kitchen itself, rather than in an appropriately equipped preparation area.

Our expansion and liquor upgrade are proposed to remedy these shortcomings and greatly enhance the presentation to the public. We are requesting a modification of our existing Conditional Use Permit to allow for expansion of the Dining Area into adjacent space we own at 25 N. Santa Cruz Avenue and to allow for us to provide access through the party wall to the rear of 25 N. Santa Cruz Avenue in order to create a functional preparation area.

We have attached a seating chart and overall layout of the proposed new space as part of the application. Alcohol would be served by wait staff to dining patrons in the expanded dining area and at a small counter area. All of the seating is enclosed. We will conduct alcohol service in accordance with the reasonable conditions proposed by the Town and we will strive to remain at all times compliant with the purposes of Town Zoning Ordinances.

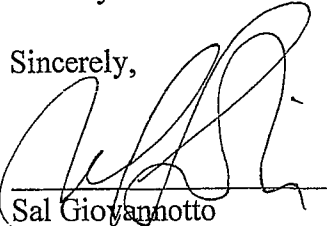
Since the proposed use will be a reasonable expansion of a currently compliant beer and wine dining establishment, and because the upgraded alcohol service will continue to be served as an adjunct to the meal selection at the restaurant, there will not be any activity detrimental or

injurious to property or improvements in the vicinity. Likewise, it will not be detrimental to the public health, safety, general welfare, or convenience.

We sincerely believe that, with the town's concurrence and permission, with these modifications we will be able to achieve our goal of providing a truly first class dining experience in a manner more consistent with the needs of our patrons and the citizens of Los Gatos.

Thank you for considering my application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sal Giovannotto', written over a horizontal line.

Sal Giovannotto

Manager, Santa Cruz Real LLC

Owner, 23, 25 and 27 N. Santa Cruz Avenue

REQUIRED FINDINGS FOR:

23-27 N. Santa Cruz Avenue

Architecture and Site Application S-07-12

Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

Required finding for CEQA:

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

Required finding for the granting of a Conditional Use Permit:

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

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

1. The proposed use of the property is essential or desirable to the public convenience or welfare;
2. The proposed use will not impair the integrity and character of the zone;
3. The proposed use would not be detrimental to public health, safety or general welfare;
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.

Required findings for projects within the Central Los Gatos Redevelopment Area:

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

CONSIDERATIONS:

Considerations in Review of Architecture & Site Applications

As required by Section 29.20.150 of the Town Code for Architecture and Site applications, the deciding body shall consider all relevant matter including, but not limited to, the following:

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.

A. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:

1. The ability of critical roadways and major intersections to accommodate existing traffic;
2. Increased traffic estimated for approved developments not yet occupied; and
3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.

B. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:

1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks and Public Works for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.
- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access.

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.
- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.

- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on non-accessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a non-accessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.
- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.



TOWN OF LOS GATOS

Planning Department
354-6872

CIVIC CENTER
110 E. MAIN STREET
P.O. Box 949
LOS GATOS, CA. 95031

CONDITIONAL USE PERMIT

U-94-28

On February 22, 1994 the Los Gatos Town Council adopted the Alcoholic Beverage Policy and an ordinance requiring all restaurants and bars to be in compliance with certain provisions of the Alcoholic Beverage Policy. In addition to the existing conditions, the conditions in **bold** become effective on February 22, 1995.

This permit issued to Pigalle at 27 N. Santa Cruz Ave. allows operation of your establishment. subject to the following condtions:

1. So long as this establishment serves alcoholic beverages it shall be subject to the following:
 - a. Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
 - b. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
 - c. This establishment shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
 - d. The licensed operator shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
 - e. Taxicab telephone numbers shall be posted in a visible location.
2. Seating is limited to a maximum of 60.
3. Beer and wine may be served with meals only.
4. The hours of operation are restricted between 11 a.m. to 11 p.m.

PLANNING COMMISSION – JANUARY 10, 2007
CONDITIONS OF APPROVAL

23-27 N. Santa Cruz Avenue

Architecture and Site Application S-07-12

Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans noted as received by the Town on December 5, 2006 and approved by the Planning Commission on January 10, 2007. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. EXPIRATION OF APPROVAL: The Conditional Use Permit application will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. BUSINESS OPERATION. This approval is for a quality restaurant use, and is restricted to the areas shown on the approved plans. Any future use of the remaining retail space shall be governed by the requirements of the C-2 zone. Any change in the type of business requires modification of the Conditional Use Permit.
4. LIVE ENTERTAINMENT. No live entertainment is allowed.
5. ROOFTOP EQUIPMENT. Any new roof mounted equipment shall be fully screened prior to issuance of an occupancy permit.
6. SIGNS. The exterior business sign(s) shall be approved by Planning prior to installation and shall be in compliance with the Town's Commercial Design Guidelines and the architectural style of the buildings.
7. ARCHITECTURAL CHANGES. The recommendations of the Consulting Architect shall be incorporated into the plans prior to submittal of plans for building plan check.
8. HOURS OF OPERATION. Hours of operation are limited to 11:00 am to 11:00 pm daily.
9. SEATS. The maximum number of seats is 84.
10. ALCOHOL SERVICE. This approval allows a full liquor license in conjunction with the operation of a quality restaurant. Alcoholic beverages shall be served with meals only.
11. TRASH ENCLOSURE. The final design of the trash enclosure shall be approved by planning prior to issuance of permits.
12. 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 pursuant to Section 29.20.340 of the Zoning Ordinance.

Building Division

13. PERMITS REQUIRED: A building permit shall be required for the alterations and expansion of existing restaurant. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
14. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
15. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
16. TITLE 24 - COMMERCIAL: For any proposed tenant improvements, the building shall be upgraded to comply with the latest California Title 24 Accessibility Standards. Necessary work shall be first investigated by the design architect, then confirmed by Town staff.
17. TITLE 24 - RESTAURANT USE: A proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:
 - a. West Valley Sanitation District: (408) 378-2407
 - b. Environmental Health Department: (408) 885-4200
 - c. Town Public Works Department: (408) 399-7530
18. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov.
19. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print.
20. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538).
21. EASEMENT. The property owner shall execute and record an easement for the proposed restaurant additions which encroach on adjacent parcel. The Town of Los Gatos shall be listed as a third party on the easement agreement. The easement document shall be reviewed and approved by the Town prior to recordation.
22. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
 - a. Community Development - Planning Division: Suzanne Davis at 354-6875
 - b. Engineering/Parks & Public Works Department: Fletcher Parsons at 395-3460
 - c. Santa Clara County Fire Department: (408) 378-4010
 - d. West Valley Sanitation District: (408) 378-2407
 - e. Environmental Health Department: (408) 885-4200

TO THE SATISFACTION OF SANTA CLARA COUNTY ENVIRONMENTAL HEALTH:

23. PLAN CHECK. Plans for the food prep and storage areas, food display cases and any wait stations shall be submitted for approval by the County Environmental Health Plan Check Division.

24. SNEEZE GUARDS. Sneeze guards shall be installed for the countertop area in the existing facility.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS

Engineering Division

25. TRAFFIC IMPACT MITIGATION FEE. The developer shall pay a fee proportional to the project's share of transportation improvement needed to serve cumulative development within the Town of Los Gatos. The fee amount will be based upon the Town Council resolution in effect at the time the building permit application is made. The fee shall be paid before the building permit is issued. The traffic impact mitigation fee for this project, using the current fee schedule and the preliminary plans is \$3,370.18. The final fee shall be calculated from the final plans using the rate schedule in effect at the time of the building permit application, using a trip generation rate based on Quality Restaurant use. The fee estimate is based on conversion of 1,422 square-feet of Specialty Retail to Quality Restaurant. The number of restaurant seats is increased from 60 to 84 (additional 24 seats).
26. 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.
27. 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.
28. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
29. 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.
30. 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.

31. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.
32. SIDEWALK CLOSURE/STREET PARKING. An encroachment permit will be required for temporary sidewalk closure. The applicant shall contact George Garcia (399.7530) for specific signage and safety requirements, and to obtain the permit. The applicant shall coordinate any temporary blockage of street parking with the Police Department.

POLICY REGULATING THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES

I. Purpose

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

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

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

II. General policy

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

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

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

III. Specific Policy

1. Restaurants:

Alcoholic beverages may only be served with meals.

2. Restaurants With Separate Bars:

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

IV. Review Process

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

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

IV. Enforcement

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

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

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

ORDINANCE 2021

ORDINANCE OF THE TOWN OF LOS GATOS AMENDING CHAPTER 29 TO PROVIDE A MORE COMPREHENSIVE REVIEW OF ADDITIONAL RESTAURANT USE IN THE DOWNTOWN AREA

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS
FOLLOWS:

SECTION I

The C-2 (Central Business District Commercial) zone of the Town of Los Gatos contains a mix of retail, restaurant, and associated uses that sustains the economic vitality and historic atmosphere of the area, and is an essential part of the community. However, too many restaurants concentrated in this one area would displace retail uses that are vital to continued success and to having businesses that attract Town residents throughout the day. This ordinance is intended to discourage the displacement of retail uses by restaurant uses by requiring the Planning Commission to conduct a careful review of all applications for new restaurant uses in the C-2 zone through the public hearing process.

SECTION II

Section 29.10.020 is amended to read as follows:

Bar means a drinking place where alcoholic beverages and snacks are served; possibly with entertainment such as music, television screens, video games or pool tables.

Restaurant, fast food means a restaurant with a large carry-out clientele, long hours of service, some open for breakfast but all open for lunch and dinner, and high turnover rates for eat-in customers.

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

Restaurant, quality means a restaurant of high quality and with turnover rates usually of at

least one hour or longer, generally do not serve breakfast, may not serve lunch, but always serve dinner.

SECTION III

Subsection (16) of Section 29.20.745 is amended to read as follows:

- (16) Determine and issue zoning approval for minor restaurants that are located outside Downtown [the C-2 zone].

SECTION IV

Subsection (8) of Section 29.20.750 is amended to read as follows:

- (8) Determines conditional use permit applications that are not assigned to the Development Review Committee.

SECTION V

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on August 5, 1996 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on September 16, 1996. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES: Joanne Benjamin, Steven Blanton, Linda Lubeck, Patrick O'Laughlin,
Mayor Randy Attaway.

NAYS: None

ABSENT: None

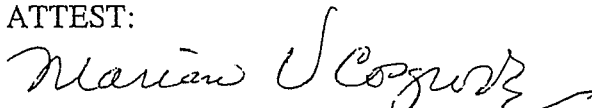
ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

Date: December 12, 2006
For Agenda Of: December 13, 2006
Agenda Item: 6
DESK ITEM

REPORT TO: The Planning Commission
FROM: Director of Community Development
LOCATION: 23-27 N. Santa Cruz Avenue
Architecture and Site Application S-07-12
Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

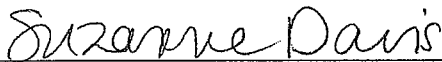
DEEMED COMPLETE: December 4, 2006

FINAL DATE TO TAKE ACTION: June 4, 2007

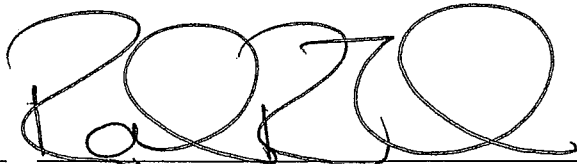
EXHIBITS: A.-F. Previously received
G. Letter from David Stonesifer (one page), received December 10, 2006

REMARKS:

The attached letter (Exhibit G) was received following distribution of the Planning Commission packet.



Prepared by:
Suzanne Davis, Associate Planner



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

BNL:SD

N:\DEV\SUZANNE\PC\REPORTS\FOW15500.wpd

Patsy Garcia - Vittorias CUP and Powells CUP applications

From: "David Stonesifer" <davidstonesifer@yahoo.com>
To: <manager@losgatosca.gov>
Date: 12/10/2006 10:43:24 AM
Subject: Vittorias CUP and Powells CUP applications

Planning Commission and Town Council

*Re: Vittorias Restaurant
And Powells Sweet Shoppe*

Dear Planning Commissioner and Town Council

These two applications to intensify usage of the historic town district seem to fly in the face of common sense. But then again I can understand why they think they will get approval. This year we seem to have done an about face in handing out C.U.P's for increased usage of food and alcohol services. Café Rouge, Los Gatos Roasting Company, Restaurant James Randall, and of course The new wine tasting rooms.

To my knowledge no measures were taken to alleviate any parking impact created when doing this. Excuse my lack of sophistication on this issue but when more, or any tables and chairs are allowed and food or wine is being served, don't we require that the property provide additional parking over and above the amount required when the space was retail or with less intensification? Did we require this of any of the above?

We made the Opera House come up with off site parking. We asked for off site parking for the residences above Le Boulanger. Willow St. provides valet parking, so how can we now approve more food usage without providing more parking. Retail viability is at stake. The economy has finally rebounded and if and when retail customers return to town, parking will be worse than ever. There will be less retail spaces for shoppers to visit as they have been turned into high-density use operations and what is left will be so expensive that only nationals can pay the rent.

Please consider carefully the dynamics of any further approval and further C.U.P. usages downtown that take away from our primary goal of a RETAIL district.

Thank you,

David Stonesifer Los Gatos Calif

Date: December 7, 2006
For Agenda Of: December 13, 2006
Agenda Item: 6

REPORT TO: The Planning Commission
FROM: Director of Community Development
LOCATION: 23-27 N. Santa Cruz Avenue
Architecture and Site Application S-07-12
Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

DEEMED COMPLETE: December 4, 2006

FINAL DATE TO TAKE ACTION: June 4, 2007

- FINDINGS:
- As required by Section 15303 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 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.

- CONSIDERATIONS:
- As required by Section 29.20.150 of the Town Code for Architecture and Site applications.

ENVIRONMENTAL ASSESSMENT: It has been determined that this project is categorically exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

RECOMMENDATION

SUMMARY: Recommendation to Town Council.

- EXHIBITS:
- A. Location Map (one page)
 - B. Required Findings & Considerations (four pages)
 - C. Recommended Conditions of Approval (three pages)
 - D. Letter from Linda Durnell (one page), received December 6, 2006

December 13, 2006

- E. Consulting Architect's Report (four pages), received December 5, 2006
- F. Development Plans (three pages), received December 5, 2006

A. BACKGROUND:

The subject applications involve three separate parcels within two buildings located on the west side of N. Santa Cruz Avenue, between Main Street and Bean Avenue. The existing restaurant, Vittoria, is currently operating within the building at 27 N. Santa Cruz Avenue. The two adjacent tenant spaces at 23 and 25 N. Santa Cruz are currently vacant, and are located in a separate building. The business owner is working on expansion plans for the restaurant and is requesting to upgrade the beer and wine license to a full liquor license. The restaurant expansion encompasses part of the tenant space at 25 N. Santa Cruz and the remainder is to be combined with the space at 23 N. Santa Cruz to form one larger space for a future retail use. Façade improvements are proposed for both the restaurant and a retail spaces.

The advertisement and public notices were given for both the Conditional Use Permit (CUP) application to expand the restaurant and to upgrade the liquor license and the Architecture and Site application for proposed exterior improvements to the building facades. The applicant has requested that the CUP be continued to allow refinement of the operational details for the restaurant, and that only the Architecture & Site application be acted on at this time.

B. REMARKS:

The applicant is requesting to expand an existing restaurant into part of the tenant space at 25 N. Santa Cruz and to add 24 seats. In addition, the existing beer and wine license is proposed to be upgraded to a full liquor license. The remainder of the adjacent space will be combined with the space at 23 N. Santa Cruz for a future retail tenant. The existing three tenant spaces will be reconfigured into two spaces under this proposal. Façade improvements are proposed for both the restaurant and retail uses. The façade improvements are the subject of this application. The use permit will be discussed at a future Planning Commission meeting.

Architectural Review

The Town's Consulting Architect, Larry Cannon of Cannon Design Group, reviewed the plans and visited the site. The recommendations of the Consulting Architect are as follows:

23 N. Santa Cruz (retail space)

- Provide a recessed vestibule instead of a flat façade.
- Add a base of at least 12-inches below the storefront display windows.
- Provide some plane changes to the storefront to provide façade depth.

27 N. Santa Cruz (Vittoria)

- Clarify the profile of the parapet cap on the storefront.
- Clarify the intent of the elements above the restaurant doors.

Staff and the Consulting Architect can work with the applicant to make any changes required by the Commission. A condition of approval has been included to this affect.

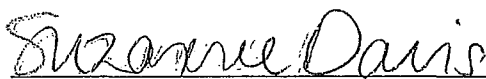
Conditional Use Permit

A lot line adjustment will be done to merge the two lots comprising the building at 23-25 N. Santa Cruz Avenue into a single parcel. An easement will be required for the restaurant expansion into the space at 25 N. Santa Cruz. This will be discussed further in the staff report for the restaurant CUP, and appropriate conditions will be attached to that application. A parking analysis, discussion on the alcohol license and operational details for the restaurant will be also presented in the CUP staff report. Staff recommends that the CUP be continued to the meeting of January 10, 2007 as requested by the applicant.

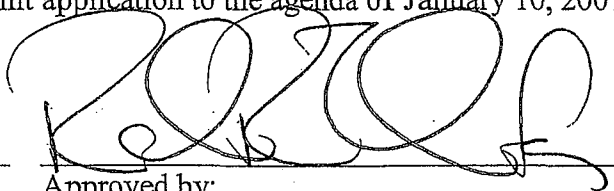
C. RECOMMENDATION:

It is recommended that the Planning Commission take the following actions:

1. Make the required findings and considerations in Exhibit B and approve the Architecture & Site application;
2. Continue the Conditional Use Permit application to the agenda of January 10, 2007



Prepared by:
Suzanne Davis, Associate Planner

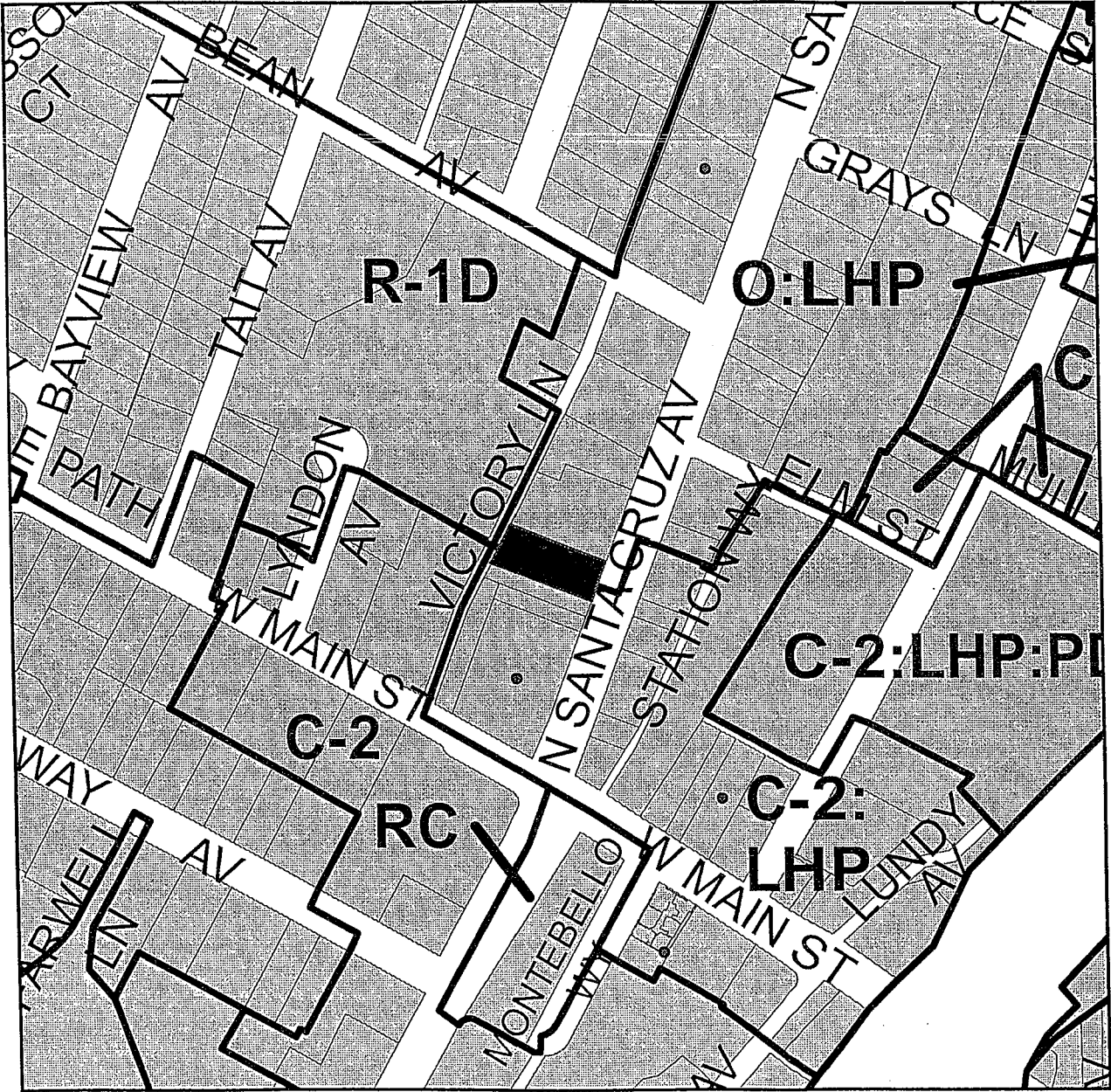


Approved by:
Bud N. Lortz, Director of Community Development

BNL:SD

cc: Alex Giovannotto, Santa Cruz Real, LLC. P. O. Box 60177, Palo Alto, CA 94306
Lou Dorcich, Architect, P. O. Box 1149, Soquel, CA 95073-1149

23-27 N. Santa Cruz Avenue



REQUIRED FINDINGS FOR:

23-27 N. Santa Cruz Avenue

Architecture and Site Application S-07-12

Conditional Use Permit U-07-09

Requesting approval of exterior modifications to a commercial building and to modify an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

Required finding for CEQA:

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

Required finding for the granting of a Conditional Use Permit:

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

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

1. The proposed use of the property is essential or desirable to the public convenience or welfare;
2. The proposed use will not impair the integrity and character of the zone;
3. The proposed use would not be detrimental to public health, safety or general welfare;
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.

Required findings for projects within the Central Los Gatos Redevelopment Area:

- 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.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks and Public Works for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.
- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access.

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.
- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.

PLANNING COMMISSION – DECEMBER 13, 2006
CONDITIONS OF APPROVAL

23-27 N. Santa Cruz Avenue
Architecture and Site Application S-07-12

Requesting approval of exterior modifications to commercial buildings on property zoned C-2.
APN 510-44-033, 034 & 035.

PROPERTY OWNER/APPLICANT: Santa Cruz Real, LLC

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans noted as received by the Town on December 5, 2006 and approved by the Planning Commission on December 13, 2006. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. EXPIRATION OF APPROVAL: The Architecture & Site application will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. ARCHITECTURAL CHANGES. The recommendations of the Consulting Architect shall be incorporated into the plans prior to submittal of plans for building plan check.

Building Division

4. PERMITS REQUIRED: A building permit shall be required for the alterations and expansion of existing restaurant. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
5. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
6. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
7. TITLE 24 - COMMERCIAL: For any proposed tenant improvements, the building shall be upgraded to comply with the latest California Title 24 Accessibility Standards. Necessary work shall be first investigated by the design architect, then confirmed by Town staff.
8. TITLE 24 - RESTAURANT USE: A proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:
 - a. West Valley Sanitation District: (408) 378-2407
 - b. Environmental Health Department: (408) 885-4200
 - c. Town Public Works Department: (408) 399-7530

16. 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.
17. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
18. 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.
19. 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.
20. 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.
21. SIDEWALK CLOSURE/STREET PARKING. An encroachment permit will be required for temporary sidewalk closure. The applicant shall contact George Garcia (399.7530) for specific signage and safety requirements, and to obtain the permit. The applicant shall coordinate any temporary blockage of street parking with the Police Department.

NADEV\CONDITNS\2006\NSC440-Starbucks.wpd

Marilyn Cosden - FW: Feedback for mtg. 12.13 and 12.18

From: Linda Durnell
To:
Date: 12/6/2006 10:30 AM
Subject: FW: Feedback for mtg. 12.13 and 12.18

Please make sure my comments are delivered to both Planning Commission and the Town Council. Thank you. Linda

----- Forwarded Message

From: Linda Durnell <ld@lindadurnellgallery.com>
Date: Wed, 06 Dec 2006 10:24:08 -0800
To: <Dfigone@losgatosca.gov>
Conversation: Feedback for mtg. 12.13 and 12.18
Subject: Feedback for mtg. 12.13 and 12.18

As the owner of a retail business in downtown Los Gatos and located across from both Powell's and Vittoria's I would like to share my perspective to the town council.

I have seen the customer demographics change as the retail "mix" has changed, over the past two years. More and more people are coming into Los Gatos for meals, particularly dinner and most retail businesses close at 5:30 pm. I have questioned long standing customers of mine and they say that the traffic during lunch with all the restaurants here, is so bad, they typically choose to shop elsewhere during the day. Some have also mentioned that their favorite shops have closed and they have found new places to shop for those items.

As Los Gatos loses the retail businesses, the town becomes less of a "destination" for shoppers. I have watched my sales slow with the lack of retail sales over the past two years and I have been forced to change my business plan to sell to corporate businesses in Palo Alto and San Francisco. This necessary change is costly but necessary to survive.

Other businesses may not have the ability to change their way of doing business or have the ability to market to new customers out of this area.

I appreciate your willingness to listen to the business owners and I am confident your decisions will benefit our community.

Best,

Linda

Linda Durnell

Linda Durnell Gallery
24 N. Santa Cruz Avenue
Los Gatos, CA 95030
408.354.9484

----- End of Forwarded Message

EXHIBIT D

23-27 N. Santa Cruz Ave.

ATTACHMENT 7
EXHIBIT E and F

**COPIES AVAILABLE FOR REVIEW
IN THE CLERK DEPARTMENT**

Suzanne Davis - Town Council Re: Vittoria appeal

From: "Justo Hernandez"
To:
Date: 02/24/2007 12:12 PM
Subject: Town Council Re: Vittoria appeal

Town Council Re: Vittoria Restaurant

The planning commission's denial of Vittoria's CUP request for turning retail space into restaurant use was an appropriate decision. It was based on Town regulations. No error was made, and there were no mitigating factors presented to approve the CUP.

The applicant claimed at the meeting that he had made a mistake and that it was his fault that he had laid out his restaurant incorrectly and decorated it so that it is too noisy. He is now requesting that we allow him to rectify these mistakes by allowing him to increase his seating in the front by breaking through the walls to an adjacent building and occupying previous retail space, because no one likes to sit in the rear of his restaurant. For some reason he as well believes it will reduce the noise level by doing this. He claimed he needed more seating because of his bad planning so that he can sit more people during his peak hour (6-7 pm) seating to make the restaurant profitable. Without Approval he claimed he will have to close the restaurant.

I would like to point out that he can move the kitchen to the rear affording more seating up front where people want to sit instead of the dark back where the kitchen belongs. He can also resolve the noise level without eliminating retail space. Acoustics are an applied science and well understood. I will as well point out that for over 35 years there was two different restaurants in this spot that were successful. For a man who claims he owns over four thousand properties he surely does not think we can be so naïve not to know what he is up to. I appreciate his recent community contributions and wish he could see similar benefit in not pushing the envelope.

In regards to the exterior modification, planning's decision to deny was also well founded. Theoretically his plans comply with requirements but they do not blend or add to the historical look of most of the block. This previously approved style for Vittoria works as it is framed within an old structure and it is in a small dose. To further increase and perpetuate this ubiquitous urban style that looks more like chain formula facades is not good. You see it everywhere: Santana Row, Palo Alto, San Francisco and San Jose. We don't need to more cookie cutter architecture in Los Gatos. I see no contradiction in the approval of Apples façade as it is not a far cry from what was there for over 60 years.

I am perplexed on why this application was allowed to be separated from the Apple application for modification. This is one building and a plan for its entire modification should have been presented at one time and not a comment by staff that the owner plans on remodeling the rest in the future. This is sort of like applying for a PD and only giving us plans for one unit. This is very bad planning.

Please uphold planning's decisions.

Larry Justo Arzie

ATTACHMENT 8