



MEETING DATE: 3/5/07

ITEM NO: 8

COUNCIL AGENDA REPORT

DATE: February 26, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER A REQUEST TO MODIFY A CONDITIONAL USE PERMIT (I GATTI'S) TO ALLOW THE SERVICE OF FULL LIQUOR ON PROPERTY ZONED C-2. APN 529-28-037. CONDITIONAL USE PERMIT U-06-005. PROPERTY LOCATION: 25 E. MAIN STREET PROPERTY OWNER: HOO GEE HOM APPLICANT: I GATTI ITALIAN BISTRO, INC.

RECOMMENDATION:

- 1. Hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Approve the application with the required findings (Attachment 1) and subject to the proposed conditions (Attachment 2) (Motion Required).
4. Refer to the Town Attorney for preparation of the appropriate resolution.

BACKGROUND:

The original Condition Use Permit (CUP) for the restaurant at 25 E. Main Street was issued in 1986 for Dorothy's Pizza. In 1991, the CUP was modified to increase the number of seats to 28 and to add the sale of beer and wine for Thai Basil Restaurant. The current owners purchased the restaurant in 1994.

DISCUSSION:

1. Project Summary

The applicant is requesting approval to modify the existing Conditional Use Permit to allow full alcohol service. No other modifications to the restaurant operation are proposed. The Police Department has reviewed this request and does not have any concerns with this proposal. The Town has not received any complaints concerning the operation of the restaurant. The request is consistent with the Town Alcohol Policy due to the following:

PREPARED BY: BUD N. LORTZ, Director of Community Development

Reviewed by: Assistant Town Manager, Town Attorney, Clerk Administrator, Finance, Community Development

- The restaurant will not have a stand alone or separate bar.
- There will be no entertainment provided at the restaurant.
- The restaurant is not open after 11 PM.
- The Conditional Use Permit conditions of approval includes the conditions recommended by the Police Department for the service of alcohol.
- The findings required for service of alcohol past 10 PM can be made.
- Alcohol will only be served with meals.
- Service of alcohol in approved existing outdoor seating areas is separated from public areas with a physical area.

2. Planning Commission

The Planning Commission reviewed the request at their meeting of January 10, 2007, voting 6-1 (Kane dissenting) to recommend that the Town Council approve the request. Commissioner Kane did not have a concern with the applicant's specific request, but voted against the request because he feels the Town Alcohol's Policy does not address restaurants modifying their liquor license from beer and wine to full alcohol service and recommending approval would be in effect creating policy. He noted that the Commission had previously requested clarification from the Council regarding this matter. A transcript of the meeting is attached.

3. Alcohol Policy:

The Council reviews CUP requests for new alcohol service on a case by case basis. The issue of allowing beer and wine service for a restaurant has been an issue that the Commission and Council have carefully reviewed to ensure that the proposed restaurant is appropriate for the proposed location. The Council reviews requests given the location, type of restaurant, hours of operation, and any other additional issues associated with the proposal and to ensure that the requests meet the requirements of the Alcohol Policy (Attachment 5).

CONCLUSION:

The Planning Commission and staff concur that the proposal complies with the Town's Alcohol Policy and will not result in adverse impacts to the Town. The current owners have operated the restaurant since 1994 and there have been no complaints regarding the operation. The Police do not have a concern with full service of alcohol at this location.

It should be noted that the CUP is for a quality restaurant. A modification to the CUP would be required if another restaurant type (such as high turn over sit down or fast food) were to occupy the space.

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MAYOR AND TOWN COUNCIL
SUBJECT: 25 E. MAIN STREET/CUP 6-06-005
February 26, 2007

ENVIRONMENTAL ASSESSMENT:

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

FISCAL IMPACT: None

Attachments:

1. Findings (one page)
2. Recommended Conditions of Approval (2 pages)
3. Existing Conditions of Approval (2 pages)
4. Verbatim Planning Commission minutes for the meeting January 10, 2007 (7 pages)
5. Report to the Planning Commission for the meeting of January 10, 2007 (2 pages/without attachments)
6. Letter of Justification (2 pages)
7. Letter in support (1 page)
7. Alcoholic Beverage Policy (6 pages)
8. Site Plan (1 page)

Distribution:

i gatti Bistro, Inc., John Uoyles, Neda & Al Mansoorian, 25 E. Main St., Los Gatos, CA 95030
Hoo Gee Hom, 17888 Cockrane Rd, Morgan Hill, CA 95037
Act Realty, 2909 El Camino Real #3, Santa Clara, CA 95051

BNL:RT:CB:mdc

REQUIRED FINDINGS FOR

25 E. Main Street

Conditional Use Permit U-06-005

Requesting approval to modify a Conditional Use Permit (I Gatti's) to allow the service of full liquor on property zoned C-2. APN. 529-28-037

PROPERTY OWNER: Hoo Gee Hom

APPLICANT: I Gatti Italian Bistro, Inc.

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

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

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

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CONDITIONS OF APPROVAL FOR:

25 E. Main Street

Conditional Use Permit U-06-005

Requesting approval to modify a Conditional Use Permit (i gatti's) to allow the service of full liquor on property zoned C-2. APN. 529-28-037

PROPERTY OWNER: Hoo Gee Hom

APPLICANT: I Gatti Italian Bistro, Inc.

TO THE SATISFACTION OF THE PLANNING DIRECTOR:

(Planning Section)

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as Exhibit F in the report to the Planning Commission. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development, the Development Review Committee or the Planning Commission, depending on the scope of the changes.
2. LAPSE FOR DISCONTINUANCE: If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
3. USE: The approved use is a quality restaurant.
4. NUMBER OF SEATS: There shall be no more than 28 seats for both indoor and outdoor seating.
5. OUTDOOR FURNITURE: Any tables or chairs used outdoor shall be moved indoors nightly. The use of outdoor seating will require a physical barrier separating the outdoor seating from the public sidewalk.
6. HOURS OF OPERATION: Maximum hours of operation for the restaurant shall be 11:00 a.m. to 11:00 p.m. seven days a week.
7. OUTDOOR LITTER: The owner or employees of the business shall police all outdoor areas adjacent to the restaurant for litter, especially the outdoor areas from Main Street Bridge to 41 E. Main St.
8. ALCOHOL SERVICE: The service of full service alcohol for on-site consumption is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. There shall be no separate bar for the restaurant.
9. BENCHES: No benches shall be placed in the public right-of-way unless approved by the Town.
10. LIVE ENTERTAINMENT: No live entertainment shall be provided.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

11. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
12. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.

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

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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-__

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 Sweet Basil Thai Cuisine at 25 E. Main Street allows operation of your establishment subject to the following conditions:

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. There shall be no more than 28 seats for both indoor and outdoor seating.
3. Hours are restricted from 11 AM to 11 PM.
4. Tables and chairs used outdoor shall be moved indoor nightly.
5. The outdoor area around the restaurant shall be maintained .

ATTACHMENT 3



6. Beer and wine may be served with meals for on-site consumption.
7. No benches shall be placed in the public right-of-way unless approved by the Town.

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

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3 Los Gatos Planning Commissioners:
4 Joanne Talesfore, Chair
5 John Bourgeois
6 Michael Kane
7 Phil Micciche
8 Tom O'Donnell
9 Steve Rice
10 Marico Sayoc
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22 Assistant Director of Community Development: Randy Tsuda
23
24
25 Town Attorney: Orry Korb
Transcribed by: Vicki L. Blandin
(510) 526-6049

LOS GATOS PLANNING COMMISSION 1/10/2007
Item #3, 25 East Main Street

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

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5 CHAIR TALESFORE: This next item is Item #3,
6 location is 25 East Main Street. It's Conditional Use
7 Permit U-06-005, requesting approval to modify a
8 conditional use permit, I Gatti restaurant, to allow the
9 service of full liquor on property zoned C-2. And I think
10 the applicant is here. Would you please come up now?

11 First of all I'd like to apologize. My vice-
12 chairman told this Italian that I was pronouncing your
13 restaurant incorrectly, and I apologize.

14 NEDA MANSOORIAN: It's okay. I wasn't about to
15 correct you.

16 CHAIR TALESFORE: Well, I wish you would. My
17 mother would not be happy. I Gatti.

18 NEDA MANSOORIAN: That's right.

19 CHAIR TALESFORE: Thank you very much. And would
20 please identify yourself?

21 NEDA MANSOORIAN: Yes, my name is Neda
22 Mansoorian.

23 CHAIR TALESFORE: Thank you, Neda. All right.
24
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LOS GATOS PLANNING COMMISSION 1/10/2007
Item #3, 25 East Main Street

1 NEDA MANSOORIAN: Good evening, Commissioners.
2 Again, my name is Neda Mansoorian. With me this evening is
3 my husband, John Voyles, who is the manager of I Gatti, and
4 we are here this evening to seek modification of the
5 existing conditional use permit to allow us to serve full
6 liquor in addition to the wine and beer license that we
7 have right now to enhance the dining experience for our
8 customers.

9 As some of you may know, we're not open for
10 lunch; we're only open for dinner. We have limited hours,
11 we don't intend to have a separate bar.

12 My dad and I opened the restaurant over 12 years
13 ago in 1994. I've lived here my whole life, and both Johnny
14 and I graduated from Los Gatos High School. I guess you
15 would characterize us as a smaller mom and pop restaurant.
16 If I may be so immodest to say, we have a great reputation
17 in the town, we run a clean business, and really I think
18 that this modification request is fairly uncontroversial.
19 We don't seek to do much other than try to keep up with the
20 changing times, keep up with the other restaurants, most of
21 the restaurants in town who now have a full liquor license
22 either through modification or through new licenses.
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1 I don't have much more to add. I would be happy
2 to answer any questions that you may have, but that's
3 pretty much it in a nutshell.

4 CHAIR TALESFORE: Okay, thank you very much.
5 Commissioners, do you have any questions of the applicant?
6 Commissioner O'Donnell.

7 COMMISSIONER O'DONNELL: I just have one
8 question. I go to your restaurant a lot and I agree with
9 everything you said; it's a wonderful restaurant. Just out
10 of curiosity, if you get a liquor license, where do you
11 serve the liquor from?
12

13 NEDA MANSOORIAN: We actually have a small
14 serving area that's used by the waiters right now. We don't
15 have a bartender to make cappuccinos and serve the wine or
16 anything like that, as it is right now. And so we have a
17 service area that stores the wine and has a cappuccino
18 machine, and what we would do is we would add hard liquor
19 to what we already have in terms in the cabinets. We
20 certainly have the room for it. I think it would be a
21 fairly seamless transition.
22

23 CHAIR TALESFORE: I have a question. I have your
24 illustration of your interior. Can you show us the area
25 that you're speaking about?

1 NEDA MANSOORIAN: Where that area is?

2 CHAIR TALESFORE: Yes.

3 NEDA MANSOORIAN: Let me get oriented on this
4 thing here. So if you're coming through the front door, you
5 go through the front hostess area, you go straight back,
6 and this area would be immediately all the way in the back
7 to your right, where it says I believe, "Beverage storage
8 area." There's also a large service table and cabinets and
9 shelves there as well, although that's not indicated on the
10 seating chart.

11 CHAIR TALESFORE: So it's where it says,
12 "Stainless steel prep, shelf, table"?

13 NEDA MANSOORIAN: Let's see. No, if you actually
14 turn the diagram around so that the bottom is Main Street,
15 if you go straight into the front door, go all the way to
16 the back to the right. It says, I think, "BRV storage
17 area." Beverage. I think it says...yeah. It's Johnny's
18 shorthand.

19 CHAIR TALESFORE: Oh, I see. I see. Okay, so it
20 is in the back.

21 NEDA MANSOORIAN: That's his fault. But anyway,
22 that's where the general area is, and we have it there, and
23 we planned how we would store and serve.
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LOS GATOS PLANNING COMMISSION 1/10/2007
Item #3, 25 East Main Street

1 CHAIR TALESFORE: I don't know how much you would
2 offer, but will you have signature drinks and a few? You
3 know, some restaurants have their liquor offerings just a
4 few.

5 NEDA MANSOORIAN: Right.

6 CHAIR TALESFORE: Is that what you would do?

7 NEDA MANSOORIAN: We certainly intend to do that.
8 We don't have the manpower, nor do we intend to hire a
9 bartender and go through all that. It's mostly really just
10 meant to cater to our customers who over and over again ask
11 for martinis, and things that are just a little more
12 mainstream, before dinner. So it's certainly not going to
13 be a large inventory of all kinds of different liquors. And
14 we intend to have a smaller menu that kind of highlights
15 the specialty drinks of the house and just keep it really
16 simple.
17

18 CHAIR TALESFORE: Okay, thank you very much. No
19 other questions? Commissioner Kane.

20 COMMISSIONER KANE: The CUP you currently have
21 allows for 28 seats. Did John do this drawing?

22 NEDA MANSOORIAN: I think that he had some help,
23 but he wrote in the descriptions and everything.
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LOS GATOS PLANNING COMMISSION 1/10/2007
Item #3, 25 East Main Street

1 COMMISSIONER KANE: Well he has had
2 abbreviations; we've established that.
3 NEDA MANSOORIAN: Yes. We'll talk about that
4 later.
5 COMMISSIONER KANE: And he's also got 30 seats.
6 NEDA MANSOORIAN: Right. Right.
7 COMMISSIONER KANE: Your limit is 28; I don't
8 know what to do about that.
9 NEDA MANSOORIAN: Right, and I actually did
10 notice that before the hearing, and we actually talked
11 about it today, and I said, "You know, the CUP is for 28
12 and we have 30, and that's inaccurate," and he told me that
13 that was a mistake on his part. He has two extra seats at
14 that last table in the back.
15 COMMISSIONER KANE: Will you speak to him later?
16 NEDA MANSOORIAN: Oh, definitely.
17 COMMISSIONER KANE: Thank you.
18 NEDA MANSOORIAN: I promise.
19 COMMISSIONER KANE: Okay.
20 CHAIR TALESFORE: Thank you, Commissioner Kane. I
21 do have one other question, and it's to speak to the
22 alcohol policy itself. When this is granted to you, then
23 this would of course go with the land. So if you sometime
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1 decided to sell it or whatever, it could change to another
2 owner who would have this license. So what I was wondering
3 is would you object if there was a condition that said
4 there would not be a standalone bar?
5 NEDA MANSOORIAN: Would I object to it?
6 CHAIR TALESFORE: Mmm-hmm.
7 NEDA MANSOORIAN: I think I would be a little
8 reluctant to agree to it, only because anything that a
9 business owner agrees to limit themselves in doing,
10 particularly if-I don't ever foresee it-but if we ever
11 wanted to sell it for any reason due to my dad's health, or
12 me or whatever, I think that it would just be something
13 that would be a great limitation on us. But if that's what
14 the commissioners would like, I don't know. I don't know.
15 CHAIR TALESFORE: Okay, thank you. I don't know
16 what they (inaudible), I'm just asking.
17 NEDA MANSOORIAN: Yeah. I would be reluctant to
18 do it, just because it's just scary to agree to give up
19 something or waive something for the future.
20 CHAIR TALESFORE: All right, thank you.
21 Commissioner Rice.
22 COMMISSIONER RICE: It's a restaurant CUP though,
23 is it not?
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1 RANDY TSUDA: That's correct. Regardless of
2 whether you have a specific condition prohibiting a
3 standalone bar, by reference the drawing is part of the
4 approved CUP. The drawing does not show a freestanding bar;
5 therefore they can't have a freestanding bar. Plus a
6 freestanding bar changes the parking requirement.

7 CHAIR TALESFORE: Fine. Thank you for clarifying
8 that.

9 NEDA MANSOORIAN: Well I guess it might be a moot
10 point.

11 CHAIR TALESFORE: In that case, if I don't see
12 any other questions of the applicant, I'm going to close
13 the public hearing. I don't have any cards either; that's
14 why I'm closing the public hearing. Thank you.

15 NEDA MANSOORIAN: Sure. Thank you.

16 CHAIR TALESFORE: All right, do I have a motion,
17 discussion? Commissioners, what's your will? Calling on you
18 for someone to make a motion. Commissioner Kane.

19 COMMISSIONER KANE: I have a discussion, and it's
20 academic; it is not I Gatti.

21 CHAIR TALESFORE: But it would pertain to the
22 decision about I Gatti?

23 COMMISSIONER KANE: Yes.

1 CHAIR TALESFORE: Thank you. I hope it would be,
2 but we never know with Commissioner Kane. I have to keep
3 him narrow.

4 COMMISSIONER KANE: At first I want to go to
5 October 2005. We had an application before us on Café
6 Marcella, and it was very similar to this application, and
7 we approved that application. In fact, I made the motion to
8 approve that application, so I remember it, and I remember
9 what else we said.

10 In fact I went back to find the minutes of that
11 meeting, and our minutes reflected in the approval that we
12 unanimously agreed to send this forward to the Council with
13 an approval recommendation, but we requested very
14 specifically that the—my opinion now—that the alcohol
15 policy is arguably not applicable to these kinds of
16 applications, because it does not address a restaurant that
17 has a beer and wine license that wants to go to full
18 alcohol, and what we said in October of 2005 with the
19 unanimous consensus that we asked Council to give us
20 guidance for this hole in the policy.

21 Now the alcohol policy has a peroration, an
22 introduction to it, and it says, "The proliferation of
23 alcohol..." The word "proliferation" is not there, but, "The
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1 proliferation of alcohol, unregulated, is deleterious to
2 the Town of Los Gatos." Boom. And I find that persuasive
3 language in that it's black and white and clear, and when
4 restaurants want to go from beer and wine to full alcohol,
5 there's nothing to regulate that, so ergo it is
6 unregulated, ergo it could be deleterious to the town, and
7 we asked in October 2005 that we get that clarification
8 from Council as to what to do with these, because we said
9 we expected that there would be more of them. Well, we have
10 two tonight, and if we granted the two that we have
11 tonight, there might be the two restaurants next door to
12 them, and the two restaurants next door to them.

14 I'm just exaggerating to make my point, but where
15 do we stop in our return to Whiskey Gulch? We need black
16 and white language. What I am saying is essentially to
17 affirm or deny this application, I would argue as to make
18 policy, because we have no language upon which we are
19 making this decision, therefore we're making policy, and I
20 think that's grounds for overturning us on the part of
21 Council, and I think we should send this to Council with
22 tell us what to do, because we have no language on
23 restaurants with beer and wine going to full alcohol, and I
24 find if we go gently into that good night, we are
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1 unregulating alcohol expansion, which indeed is deleterious
2 to the town.

3 CHAIR TALESFORE: Thank you. I have other
4 commissioners who would like to comment. I think it was
5 Commissioner O'Donnell first.

6 COMMISSIONER O'DONNELL: I'll make a motion, and
7 so doing I'll respond. I'm going to move to recommend to
8 Council that we approve, and the required findings, which I
9 think are for the Council to make, not for us, are set
10 forth in Exhibit A of our packet. I think we have to look
11 at those required findings, because if we think oh golly,
12 they couldn't make those, then we shouldn't make the
13 recommendation.

15 But when I look at these, and I'm sympathetic to
16 Commissioner Kane's point, but since they will have to make
17 these points, it couldn't possibly be deleterious to
18 anybody, because the first thing you have to decide if the
19 proposed uses of the property are desirable to the public
20 convenience or welfare, so the Council has got to make the
21 findings required in that first section, and then the
22 alcohol resolution further limits it, and then secondly we
23 have conditions, which I think if anybody objects to some
24 of the conditions I'll tell the Council at the moment.
25

1 But my motion would simply be that we recommend
2 to the Council that they approve the request and that we
3 believe they will be able to make the required findings and
4 that we do support the proposed conditions.

5 COMMISSIONER MICCICHE: And I'll second that.

6 CHAIR TALESFORE: Okay, I have a motion by
7 Commissioner O'Donnell to approve, and a second by
8 Commissioner Micciche. Do I have any further discussion on
9 that? Commissioner Kane.

10 COMMISSIONER KANE: It is likely I will not
11 support the motion. I don't know that it's desirable; I
12 don't know that it does not impair the integrity and
13 character. It is detrimental to public health, the Chief of
14 Police said that in the newspaper this week, and is not in
15 harmony with the elements of the General Plan.

16 In fact, it flies in the face of the General Plan
17 and the purposes of the Town Code, and I think an act of
18 good will here is understandable, but I don't want this to
19 go forward without an reminder of October 2005 and the fact
20 that we asked for guidance and what to do with these
21 dominoes when they come before us, that every restaurant in
22 town will say, "In order to compete, I must." And it's hard
23 for us to deny that, and if we had written language on
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1 where we should draw the line on this topic that is not
2 covered anywhere, then we would know what to do. And since
3 it is not covered anywhere, I think we're making policy and
4 we shouldn't.

5 CHAIR TALESFORE: Okay. Does any other
6 commissioner have something they'd like to add? Then I will
7 call the motion. Those in favor of recommending approval to
8 modify a conditional use permit for I Gatti, say aye. Those
9 opposed?

10 COMMISSIONER KANE: Nay.

11 CHAIR TALESFORE: Okay, we have six in favor and
12 one opposed. Thank you.

13 (END)

Date: January 3, 2007
For Agenda Of: January 10, 2007
Agenda Item: 3

REPORT TO: The Planning Commission
FROM: The Director of Community Development
LOCATION: 25 E. Main Street
Conditional Use Permit U-06-5

Requesting approval to modify a Conditional Use Permit (I Gatti's) to allow the service of full liquor on property zoned C-2. APN. 529-28-037

PROPERTY OWNER: Hoo Gee Hom
APPLICANT: I Gatti Italian Bistro, Inc.

DEEMED COMPLETE: November 7, 2006
FINAL DATE TO TAKE ACTION: May 7, 2007

FINDINGS:

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
- As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.
- It has been determined that this project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

EXHIBITS:

- A. Required Findings (one page)
- B. Resolution 2001-106 (six pages)
- C. Existing Conditions of Approval (two pages)
- D. Proposed Conditions of Approval (two pages)
- E. Letter of Justification, received November 7, 2006 (two pages)
- F. Email in support of the application (one page)
- G. Floor Plan, received September 12, 2006 (one page)

RECOMMENDATION
SUMMARY:

Forward a recommendation to the Town Council.

A. BACKGROUND:

The original Condition Use Permit (CUP) for the restaurant at 25 E. Main Street was issued in 1986 for Dorothy's Pizza. In 1991, the CUP was modified to increase the number of seats to 28 and to add the sale of beer and wine for Thai Basil Restaurant. The current owners purchased the restaurant in 1994.

B. REMARKS:

The applicant is requesting approval to modify the existing Conditional Use Permit to permit full service alcohol. No other modifications to the restaurant operation are proposed.

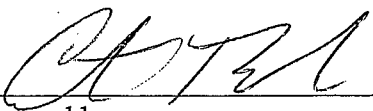
Town staff has determined that the request to add full service alcohol to I Gatti Italian Bistro complies with the Town's Alcohol Policy (Exhibit B) and that the approval of this request will not create any adverse impacts. The Police Department has reviewed this request and does not have any concerns with this proposal. The Town has not received any complaints concerning the operation of the restaurant. The request is consistent with the Town Alcohol Policy due to the following:

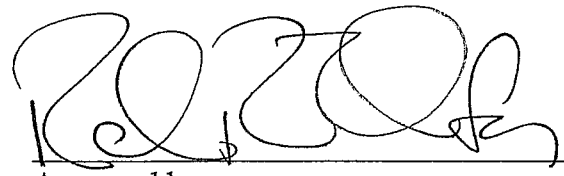
- The restaurant will not have a stand alone or separate bar.
- There will be no entertainment provided at the restaurant.
- The restaurant is not open after 11 PM.
- The Conditional Use Permit conditions of approval includes the conditions recommended by the Police Department for the service of alcohol.
- The findings required for service of alcohol past 10 PM can be made.
- Alcohol will only be served with meals.
- Service of alcohol in approved existing outdoor seating areas is separated from public areas with a physical area.

C. RECOMMENDATION:

Pursuant to the Town's Alcohol Policy, this matter will be forwarded to the Town Council for final consideration. The Commission should forward this application to the Council with the following recommendation:

1. Approval of the request to modify Conditional Use Permit to include full service alcohol sales with the Findings included as Exhibit A; or
2. If the Commission has concerns with the application, it can:
 - a. Recommend approval of the application with modified conditions, or
 - b. Recommend denial of the application.


Prepared by:
Vu-Bang Nguyen, Planner


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

BNL:RT:VBN:mdc

cc: i Gatti Bistro, Inc., John Uoyles, Neda & Al Mansoorian, 25 E. Main St., Los Gatos, CA 95030
Hoo Gee Hom, 17888 Cochrane Rd., Morgan Hill, CA 95037
Act Realty, 2909 El Camino Real #3, Santa Clara, CA 95051

November 6, 2006

VIA FACSIMILE & E-MAIL

Mr. Vu-Bang Nguyen, AICP
Planner
Town of Los Gatos
Community Development Department
Planning Commission
110 E. Main Street
P.O. Box 949
Los Gatos, CA 95031

RECEIVED
NOV 7 2006
TOWN OF LOS GATOS
PLANNING DIVISION

Re: CUP Modification Proposal By I Gatti Italian Bistro

Dear Mr. Nguyen:

We own I Gatti Italian Bistro, a small family-owned supper house located at 25 East Main Street, APN number 529-28-037, catering to local residents and families for over 12 years.

We seek to modify our existing conditional use permit to include the sale of spirits in addition to wine and beer. In light of the highly competitive restaurant market in our town, a result of new big-budget restaurants with liquor licenses opening in recent years (and even months) and with existing restaurants even obtaining full liquor licenses, we believe that in order to survive, we too need to obtain a full liquor license. We have lost business to other restaurants due to our limitation with the type of beverages we can offer. We are trying to keep up with the changes and trends in order to maintain our business and customers.

This new permit will not adversely affect the public safety of the Town's residents or the professional operation of our business. To date, we have not had any complaints or history of non-compliance with local ordinances or with the Town of Los Gatos Alcoholic Beverage Policy. This is because our staff and manager have been trained properly and also because our customers, mostly Los Gatos locals, conduct themselves responsibly. Moreover, there is always at least one member of our family at the restaurant to oversee that the business is operated in a professional manner.

The sale of spirits in addition to wine and beer would not adversely impact adjacent residential neighborhoods, since our hours of operation end at 11:00 p.m. (we do not wish to modify the CUP to change the hours of operation), with no risk of "late-night" crowds and loud noise.

I GATTI ITALIAN BISTRO – 25 East Main Street – Los Gatos, California – 95030 - 408.399.5180

We intend to serve beer, wine, and liquor with meals only. The addition of spirits to the wine and beer we already sell with food will be seamless, as they will be served only with meals and at the dinner tables, not through a separate bar.

We already have applied for an ABC Priority Application Drawing, and our name made it in the drawing for a new General On-Sale License. In order to qualify for the permanent license, we need the Town's CUP modification approval. If we do not receive the Town's approval by January, 2007, it is highly likely that we will have to wait another year to obtain our license, as the ABC licensing process is only conducted once a year.

We request that our application be considered as soon as it is practicable. I thank you for your time and courtesy in this matter.

Very truly yours,

NEDA MANSOORIAN

nmansoorian@mfmllaw.com
408-410-7630

Suzanne Davis - Conditional Use Permit U-06-005 for I Gatti

From:
To: "Debra Figone" , "Randal Tsuda" , , "J Pirzynski"
Date: 01/02/2007 1:14 PM
Subject: Conditional Use Permit U-06-005 for I Gatti

Dear Planning Commissioners, Mayor Pirzynski and Council Members, Debra Figone and Randal Tsuda,

Thank you for your notice regarding the request of I Gatti for for the modification of their CUP to allow the full-service of liquor on their premises.

Both Jay and I would like to express our support for Neda Mansoorian and her husband John, owners of I Gatti in their request to expand alcohol service in their restaurant. I Gatti has been an attractive and wonderful addition to East Main Street, and as loyal customers of this restaurant for many years, we know well the general operation, management and staff. As business owners located across the street, we are always pleased to recommend this well-run, excellent restaurant to customers who inquire of the best of local eateries.

Because of I Gatti's consistant quality and service, we do not believe that there would be any adverse impact on the immediate community or businesses around them with the approval of this permit. John's impeccable management and upscale presentation, only insure that the inclusion of full liquor choices, would only create more choice for his dinner customers.

We also do not believe that this would adversely affect the evening bar service or full liquor service of our mutual neighbor, Tapestry A California Bistrot, located in the Soda Works Plaza complex. These two restaurants, as others on our street, have their own, distinct style and clientele, and in our opinion, and are not competitive in either food or alcohol issues.

I Gatti is a family-run business with high standards and values. They have proved themselves as a solid business with years of experience, and are an asset to the restaurant community and Town of Los Gatos. Please approve their request to complete their liquor service for their evening diners. They certainly deserve the opportunity.

Sincerely yours,

Sallie Robbins-Druian & Jay Druian
The French Cellar
32 East Main Street
Los Gatos
CA 95030

408.354.0993

ATTACHMENT 7

RESOLUTION 2001 - 106

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

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

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

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

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

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

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

COUNCIL MEMBERS:

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

NAYS: None

ABSENT: None

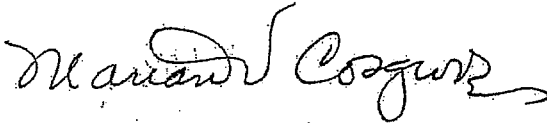
ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

POLICY REGULATING THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES

I. Purpose

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

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

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

II. General policy

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

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

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

III. Specific Policy

1. Restaurants:

Alcoholic beverages may only be served with meals.

2. Restaurants With Separate Bars:

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

IV. Review Process

1. Proposals for new bars or restaurants with bars and all requests for new alcohol service or a change to existing service shall be reviewed by the Planning Commission. The Commission will make a recommendation to the Town Council and the Council shall have final review authority.

2. Changes in ownership for businesses involving service of alcoholic beverages shall be reviewed by the Community Development Department. The following process will be followed:

a. The Director of Community Development shall contact the new business owner to make them aware of the conditions of approval attached to the Use Permit for the location.

b. One year following issuance of a business license, surrounding/impacted property owners shall be notified and any comments regarding the operation of the business shall be solicited.

c. If the Director of Community Development becomes aware of any alcohol related impacts on the surrounding neighborhood, the Director shall review the operation of the business to determine whether there is a violation of the use permit.

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

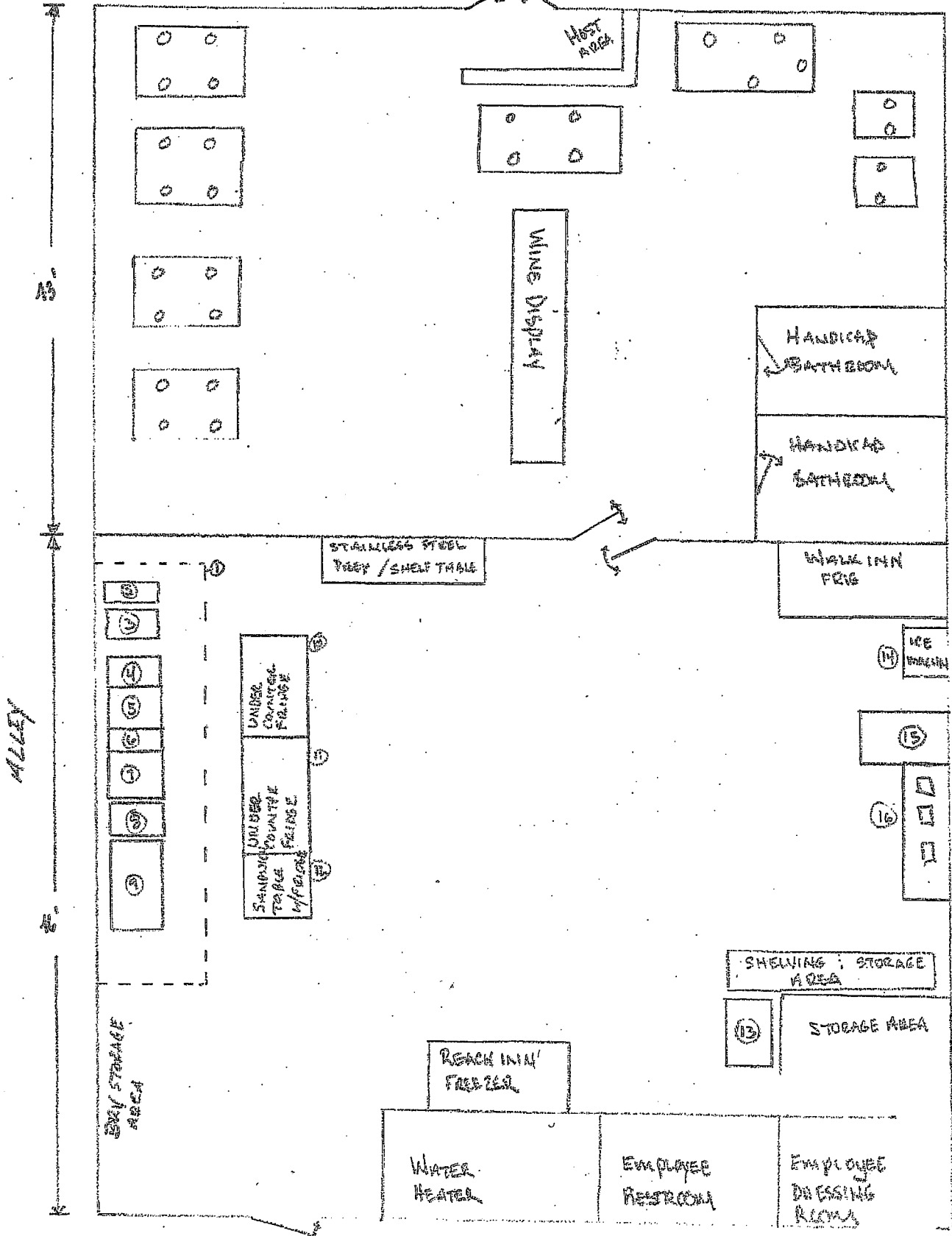
IV. Enforcement

All conditional use permits issued to establishments for alcoholic beverage service on-site shall be subject to Section 29.30.310(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 29.20.310(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 which that are a direct result of patrons actions;
- II. The number of complaints received from residents ad 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.

MAIN STREET



- ① HOOD
- ② DEEP FRYER
- ③ STAINLESS STEEL TABLE
- ④ CHILL
- ⑤ SIX BURNER OVEN
- ⑥ STAINLESS STEEL TABLE
- ⑦ SIX BURNER OVEN
- ⑧ STAINLESS STEEL PREP TABLE
- ⑨ STAINLESS STEEL PREP TABLE
- ⑩ COUNTED FRIDGE
- ⑪ UNCOUNTED FRIDGE
- ⑫ SANDWICH TABLE WITH FRIDGE
- ⑬ REACH IN REFRIGERATOR
- ⑭ ICE MACHINE
- ⑮ DISH WASH
- ⑯ 3 HOLE SINK

RECEIVED

SEP 12 2006

TOWN OF LOS GATOS
PLANNING DIVISION

REAR