



MEETING DATE: 03-19-2007
AGENDA ITEM:

5

COUNCIL AGENDA REPORT

DATE: MARCH 14, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: ORRY P. KORB, TOWN ATTORNEY *OK*

SUBJECT: RESOLUTION GRANTING 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. APN 510-44-033, 034 & 035. ARCHITECTURE AND SITE APPLICATION: S-07-12. CONDITIONAL USE PERMIT U-07-09. PROPERTY LOCATION: 25-27 N. SANTA CRUZ AVENUE. PROPERTY OWNER/APPLICANT/APPELLANT: SANTA CRUZ REAL, LLC.

RECOMMENDATION:

Adopt resolution granting an appeal of the Planning Commission's decision to deny 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 and a change in alcohol service on property zoned C-2.

DISCUSSION:

On March 5, 2007, Council granted an appeal of the Planning Commission's decision to deny a request to approve exterior modifications to a commercial building, and the modification of an existing conditional use permit to allow expansion of an existing restaurant and a change in alcohol service on property zoned C-2. The attached resolution finalizes that decision.

Attachment: Proposed Resolution

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK.LMB/wp [N:\ATY\Report 23-27 NSC (Vittorias).wpd]

Reviewed by: *[Signature]* Town Manager *PSJ* Assistant Town Manager _____ Clerk
Finance *SUB* Community Development

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File# 301-05

RESOLUTION

RESOLUTION GRANTING AN APPEAL OF A PLANNING COMMISSION DECISION DENYING AN APPLICATION 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.

**APN: 510-44-033, 034 & 035
ARCHITECTURE AND SITE APPLICATION: S-07-12
CONDITIONAL USE PERMIT APPLICATION: U-07-09
PROPERTY LOCATION: 25-27 N. SANTA CRUZ AVENUE
PROPERTY OWNER OWNER/APPLICANT/APELLANT:
SANTA CRUZ REAL, LLC**

WHEREAS:

- A. This matter came before the Town Council for public hearing on March 5, 2007, and was regularly noticed in conformance with State and Town law.
- B. Council received testimony and documentary evidence from the appellant/applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated March 1, 2007, along with any and all subsequent reports and materials prepared concerning this application.
- C. The applicant seeks to expand an existing restaurant into part of the tenant space at 25 N. Santa Cruz Avenue 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 Avenue for a new formula retail use (the Apple Store). Facade improvements are proposed for both the restaurant and retail uses. Given the recent approval of the facade of the formula retail tenant space, the applicant has revised the Architecture & Site application to include only the proposed changes relative to the portion of the building that will be used for the restaurant expansion.

D. On December 13, 2006, the Planning Commission considered the Architecture & Site application for facade improvements for both the restaurant and retail spaces. The applicant asked that the Commission act on the Architecture & Site application independently and requested a continuance for the Conditional Use Permit (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 Architecture & Site application for exterior modifications to the buildings and recommended denial of the CUP. The Commission did not support the restaurant expansion as it would displace what was previously a retail use, which has been vacant since 2004. 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.

Subsequent to the above decision, on February 14, 2007, the Planning Commission approved a CUP for the Apple Store, a formula retail use. A companion Architecture & Site application was approved for facade improvements for the retail tenant space. The Apple Store will encompass the entire tenant space at 23 N. Santa Cruz Avenue and part of the space at 25 N. Santa Cruz Avenue.

F. The applicant/appellant claims that the Planning Commission erred or abused its discretion in its decision to deny the Architecture & Site application on the grounds that expansion would displace what was previously a retail use, which is discouraged by Town Ordinance 2021.

F. The decision of the Planning Commission is hereby reversed.

G. Council finds as follows:

i. Pursuant to Town Code section 29.20.300, the decision of the Planning Commission is reversed as a consequence of 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: to wit, whether a restaurant use could displace existing retail space given Ordinance 2021. Council finds that the concerns addressed in Ordinance 2021 to not arise here given the approval of the CUP for the Apple Store, which will greatly reduce, break up and render impracticable the remaining portion of 25 N. Santa Cruz Avenue for future retail use, and also that the use of said remaining space for the restaurant will improve the operations, desirability and future success of said use. Specifically, 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. Given the approval of the CUP for an Apple Store, the combination of the space at 23 N. Santa Cruz Avenue and a portion of the space at 25 N. Santa Cruz Avenue will provide a more viable use of the floor area with that tenant space. The restaurant expansion would use the remainder of the space at 25 N. Santa Cruz Avenue to make Vittoria a more viable restaurant in addition to providing much needed food prep areas.

ii. Pursuant to Town Code section 29.20.190, the requested modification of an existing CUP are desirable to the public convenience; will not impair the integrity and character of the zone; would not be detrimental to public health, safety or general welfare; and is in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code. Evidence in the record demonstrates that the proposed change in the service of alcohol (1) will not adversely impact adjacent residential neighborhoods, (2) is not precluded by a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy, and (3)

the preservation of downtown Los Gatos as the historic center of the Town with goods and services for local residents while maintaining the existing Town identity, environment and commercial viability.

iii. The applicant/appellant has demonstrated the necessary evidence to show the following in its request for a change in the service of alcohol past 10 p.m.: (1) Late night service will not adversely impact adjacent residential neighborhoods; (2) The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy; and (3) the applicant has demonstrated a clear benefit to the community.

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

v. The proposed use is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (section IV.B), as evidenced by the staff report prepared for the public hearing on March 5, 2007.

RESOLVED:

1. The appeal of the decision of the Planning Commission on Architecture & Site Application S-07-12 is granted.

2. The application for modification of the CUP (U-07-09) is granted.

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

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

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los

Gatos, California on the _____ day of March 2007, by the following vote.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR
TOWN OF LOS GATOS, CALIFORNIA

TOWN COUNCIL – MARCH 5, 2007
CONDITIONS OF APPROVAL

25-27 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, and is restricted to the areas shown on the approved plans. 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 the Director of Community Development 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.