



MEETING DATE: 05/21/2007

ITEM NO: 11

## COUNCIL AGENDA REPORT

DATE: May 11, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF THE PLANNING COMMISSION DECISION DENYING A REQUEST TO OPERATE A RESTAURANT ON PROPERTY ZONED C-2. APN 529-03-035. CONDITIONAL USE PERMIT U-07-24  
PROPERTY LOCATION: **42 ELM STREET.** PROPERTY OWNER: MICHAEL COBLER. APPLICANT/APPELLANT: SUH CHUNG KIM.

### RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. The Council may take any of the following actions on Conditional Use Permit (CUP) application U-07-24 (**motion required**):
  - a. Uphold the Planning Commission's decision to deny the CUP application.
  - b. Grant the appeal and approve the CUP application, subject to the required findings (Attachment 2) and conditions (Attachment 3).
  - c. Grant the appeal and approve the CUP application with modified conditions.
4. Refer to the Town Attorney for the preparation of the appropriate resolution if approved or denied (**no motion required**).

If the Town Council determines that the Planning Commission's decision should be reversed or modified relative to the appeal:

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
  - (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

PREPARED BY: BUD N. LORTZ *BN/LP*  
DIRECTOR OF COMMUNITY DEVELOPMENT

Reviewed by: *JS* Assistant Town Manager *OK* Town Attorney  
\_\_\_\_ Clerk Administrator \_\_\_\_ Finance ☒ Community Development

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SUBJECT: 42 ELM STREET

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- (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 Conditional Use Permit application (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 (Café Delatti) is requesting approval to maintain a high turnover/sit-down restaurant with the following modifications to the CUP:

- Sales and service for primarily frozen yogurt plus organic coffee drinks, flavored teas, and fruit smoothies; and
- Discontinuance of all alcohol service, wine tasting and retail alcohol sales; and
- Reduction of hours of operation to 10:00 AM to 9:00 PM from 6:00 AM to 1:00AM.

The applicant will maintain the existing approved 12 seats, indoors and outdoors. The Planning Commission report (Attachment 5) contains additional discussion on the proposal.

BACKGROUND:

The previous tenant at the project site (Café Rouge) received approval for a Conditional Use Permit (CUP) on August 21, 2006 for a high turnover/sit-down restaurant which allowed:

- A total of 12 seats, indoors and outdoors;
- Beer and wine service with meals;
- Wine tasting;
- Hours of operation from 6:00 AM to 1:00 AM seven days a week;
- Alcohol service and retail alcohol sales limited between the hours of 11:00 AM to 11:00 PM; and
- Outdoor seating

When the applicant approached the Town regarding their proposed modifications to the restaurant, staff carefully evaluated their request to determine what process would be required for the proposed use.

Section 29.20.200 (3) of the Town Code states that any change that is a substantial departure from plans which were the basis of the CUP approval will require a modification to the CUP. Additionally, Council Resolution 2005-037 (Attachment 7) further clarifies when a modification

of a CUP is required. Although both restaurants are classified as high turnover sit down restaurants, the operation of the approved and proposed restaurants was determined to be substantially different. The approved restaurant allowed service of meals, beer and wine service with meals, and wine tasting. The proposed restaurant is for yogurt and nonalcoholic drinks. Additionally, none of the conditions of approval relating to the service and tasting of alcohol for the existing restaurant would be applicable to the proposed use. After reviewing the applicant's request, the resolution, and Town Code, staff determined that a modification of the CUP was required.

PLANNING COMMISSION:

The Planning Commission denied this application on April 11, 2007 (Attachment 4). The Commission was concerned that there was a saturation of restaurants selling dessert products in the downtown area including frozen yogurt, ice cream and gelato. The Commission felt that to approve additional shops would be inconsistent with the General Plan goal of providing a mix of commercial uses.

The Town does not currently have policies that specifically regulate establishments that sell dessert products. As a result, uses of this nature are considered restaurants based on the current Town Code.

APPEAL:

An appeal of the Planning Commission's decision was received on April 19, 2007 (Attachment 1). The appellant/applicant's basis for the appeal is that the Commission erred or abused its discretion in that the findings could be made to approve the Conditional Use Permit and the application is consistent with the General Plan and that the Commission failed to collect adequate Planning Department Policy information regarding the proposed business.

CONCLUSION:

If the Council approves the modifications to the CUP, it should make the required findings and considerations specified in Attachment 2, and approve the applications, subject to the recommended conditions in Attachment 3.

ENVIRONMENTAL ASSESSMENT:

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

FISCAL IMPACT: None.

Attachments:

1. Appeal filed on April 19, 2007 (2 pages)
2. Required findings
3. Recommended Conditions of Approval (2 pages)
4. Verbatim minutes from the Planning Commission meeting of April 11, 2007

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5. Report to the Planning Commission dated April 5, 2007 for the meeting of April 11, 2007 (Exhibits A and B deleted and incorporated as Attachments 1 and 3 of this report).
6. Desk item report to the Planning Commission dated April 11, 2007 for the meeting of April 11, 2007.
7. Resolution 2005-037 (3 pages)
8. Letter of opposition, dated May 7, 2007 (2 pages)

Distribution:

Suh Chung Kim, 3098 Butte Street, Santa Clara, CA 05051

Michael Cobler, 900 East Campbell Avenue, Campbell, CA 95008

Jimmy Chang, 991 Alta Mar Terrace, San Jose, CA 95126

BNL:RT:JP:

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**FILING FEES**

\$277.00 Residential

\$1,111.00 per Commercial, Multi-family or Tentative Map Appeal

Town of Los Gatos

Office of the Town Clerk

110 E. Main St., Los Gatos CA 95030

APR 19 2007

**APPEAL OF PLANNING COMMISSION DECISION**TOWN OF LOS GATOS  
PLANNING DEPARTMENT

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION: 04/11/07

PROJECT / APPLICATION NO:

ADDRESS LOCATION:

42 ELM ST. Los Gatos CA 95030

CK#1273

1611,00

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Council members. Therefore, please specify how one of those reasons exist in the appeal:

1. The Planning Commission erred or abused its discretion because ATTACHED
2. There is new information that was not reasonably available at the time of the Planning Commission decision, which is \_\_\_\_\_; OR  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(please attach the new information if possible): OR
3. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council: \_\_\_\_\_

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

**IMPORTANT:**

1. Appellant is responsible for fees for transcription of minutes. A \$500.00 deposit is required at the time of filing.
2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10<sup>th</sup> day following the decision. If the 10<sup>th</sup> day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10<sup>th</sup> day, usually a Monday.
3. The Town Clerk will set the hearing withing 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967)
4. An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
5. Once filed, the appeal will be heard by the Town Council.
6. If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: SUH CHUNG KIMSIGNATURE: [Signature]DATE: 04/19/07ADDRESS: 3098 Butte St.PHONE: 408) 482-0019Santa Clara, CA 95051

\*\*\* OFFICIAL USE ONLY \*\*\*

DATE OF PUBLIC HEARING: May 21, 2007CONFIRMATION LETTER SENT: Date: 4/26/07

Pending Planning Department Confirmation

TO APPLICANT &amp; APPELLANT BY:

DATE TO SEND PUBLICATION: May 9, 2007DATE OF PUBLICATION: May 9, 2007

NADEV\FORMS\Planning\Planning Commission Appeal.wpd

Revised July 1, 2006

Attachment 1

The Planning Commission erred or abused its discretion because:

1. Planning Commission failed to find that each of the following findings area supported by the Applicant's Conditional Use Permit application.
  - (a) The proposed uses of the property are essential or desirable to the public convenience or welfare;
  - (b) The proposed use will not impair the integrity and character of the zone;
  - (c) The proposed uses would not be detrimental to public health, safety or general welfare; and
  - (d) 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.
2. The Planning Commission failed to find that the proposed use was entirely consistent with the land use element of the Town's General Plan for the Central Business District, in that the use is retail, locally-owned, pedestrian-oriented, and consistent with the small-town and historical nature of the downtown area.
3. The Planning Commission failed to collect adequate Planning Department Policy information concerning the Applicant's proposed business.
  - (a) Use & Occupancy: The current approved use is a high turnover(sit-down) *restaurant* as defined by the Zoning Ordinance.

*Restaurant • A definition of restaurant is contained in the Zoning Ordinance (29.10.020). Restaurants include those businesses offering food or drinks that are ordered by the customer and prepared while the customer waits (e.g. bagels with condiments, gourmet coffee shops (except sales of whole bean or ground coffee), sandwiches, ice cream, yogurt, pizza or Chinese to-go, health drinks, etc.). Any business that sells food products and offers seating for customers is considered a restaurant.*

- (b) Land Use: There is no current policy addressing and/or limiting the number of yogurt retail store can be opened in Central Business District.

## REQUIRED FINDINGS FOR

42 Elm Street

Conditional Use Permit U-07-24

Requesting approval to modify an existing CUP (Café Rouge) to allow a coffee and yogurt business (Café Delatti) on property zoned C-2. APN 529-03-035

PROPERTY OWNER: Michael Cobler

APPLICANT: Suh Chung Kim

## FINDINGS

- As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.
- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
  - (a) The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of the Town Code if it finds that:
    - (1) The proposed uses of the property are essential or desirable to the public convenience or welfare;
    - (2) The proposed uses will not impair the integrity and character of the zone;
    - (3) The proposed uses would not be detrimental to public health, safety or general welfare; and
    - (4) The proposed uses of the property are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.
- That the proposed project is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (Section IV.B).





**RECOMMENDED CONDITIONS OF APPROVAL FOR:**

**42 Elm Street**

**Conditional Use Permit U-07-24**

**Requesting approval to modify an existing conditional use permit (CUP) to allow a coffee and yogurt business (Café Delatti) on property zoned C-2. APN 529-03-035**

**PROPERTY OWNER: Michael Cobler**

**APPLICANT: Suh Chung Kim**

**TO THE SATISFACTION OF THE COMMUNITY DEVELOPMENT DIRECTOR:**

(Planning Section)

1. **CONDITIONS:** These conditions of approval shall supersede all previously adopted conditions.
2. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as Exhibit E in the report to the Planning Commission. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development or the Planning Commission, depending on the scope of the changes.
3. **LAPSE FOR DISCONTINUANCE:** If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
4. **USE:** The approved use is a high turn over sit down restaurant.
5. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 12 seats total indoors and outdoors.
6. **HOURS OF OPERATION:** Maximum hours of operation for the restaurant shall be 10:00 AM to 9:00 PM seven days a week.
7. **ALCOHOL SALES:** Alcohol service and retail alcohol sales shall not be permitted.
8. **TAKE OUT:** Take out food shall be served in recycled material containers.
9. **UTENSILS:** All beverages and food served on site shall be served on reusable materials.
10. **TRASH:** Operators of the restaurant shall pick up trash along the business frontage and in the vicinity of the restaurant when outdoor seating is available.

**TO THE SATISFACTION OF THE BUILDING DEPARTMENT:**

(Building Section)

11. **PERMITS REQUIRED:** A building permit shall be required for any interior tenant improvement to the existing commercial building. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
12. **CONDITIONS OF APPROVAL:** The Conditions of Approval must be blue-lined in full on the cover sheet of the constructions plans. A Compliance Memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed
13. **SIZE OF PLANS:** Four sets of construction plans, maximum size 24"x36".
14. **BACKWATER VALVE:** The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information

on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12-inches above the elevation of the next upstream manhole.

15. 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.
16. TITLE 24 – RESTAURANT USE: Proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:
  - a. West Valley Sanitation District (WVSD): (408) 378-2408
  - b. Environmental Health Department: (408) 885-4200
  - c. Town Public Works Department: (408) 399-7530
17. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties, and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at [www.losgatosca.gov/building](http://www.losgatosca.gov/building).
18. NONPOINT SOURCE POLLUTION STANDARDS SHEET: The Town standard Santa Clara County Valley Nonpoint Source Pollution Control Program Sheet (or Clean Bay Sheet 24x36) 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 for a fee.
19. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538).
20. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
  - a. Community Development – Planning Division: Elizabeth Pettis at 354-6802
  - 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

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

21. RAILING: A railing of similar materials and appearance to that used on the adjacent parking structure shall be provided along the back side of the handicap ramp. The rail shall be provided prior to issuance of a certificate of occupancy, or within 3 months of issuance of the Conditional Use Permit, whichever comes first.

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  
Marico Sayoc

Assistant Director of  
Community Development:

Randy Tsuda

Town Attorney:

Orry Korb

Transcribed by:

Vicki L. Blandin  
(510) 526-6049

LOS GATOS PLANNING COMMISSION 4/11/2007  
Item #4, 42 Elm Street

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

CHAIR TALESFORE: We are going to get to Item #4,  
42 Elm Street. I think we're within our time limit. Do I  
need to assess anymore? No, okay. So let's bring up the  
applicant for Item #4. Well first of all, Mr. Tsuda, do you  
have a Staff Report on this?

RANDY TSUDA: Actually Elizabeth Pettis, one of  
our assistant planners, is going to provide you with that  
Staff Report.

CHAIR TALESFORE: Thank you.

ELIZABETH PETTIS: This is Conditional Use Permit  
U-07-24 for 42 Elm Street. The applicant is requesting  
approval to modify an existing conditional use permit to  
allow for a yogurt and coffee business on property zoned C-  
2, and this will be to permit a high-turnover, sit-down  
restaurant that will serve organic coffee, drinks, frozen  
yogurt, flavored teas, and fruit smoothies, have a total of  
12 seats indoors and outdoors, with the hours of operation  
between 10:00am and 9:00pm.

The previous tenant, Café Rouge, received approval  
for a conditional use permit on August 21, 2006 for a high-  
turnover, sit-down restaurant, which allowed a total of 12

LOS GATOS PLANNING COMMISSION 4/11/2007  
Item #4, 42 Elm Street

1 seats indoors and outdoors, with the hours of operation  
2 between 6:00am and 1:00am, seven days a week, with beer and  
3 wine service with meals, wine tasting, alcohol service and  
4 retail alcohol sales between the hours of 11:00am and  
5 11:00pm, and outdoor seating.

6 CHAIR TALESFORE: Thank you very much. Do we have  
7 any questions, Commissioners? Commissioner Kane.

8 COMMISSIONER KANE: In that Café Rouge is out,  
9 does the CUP regarding alcohol become a sunset policy? Is  
10 that now gone? Would a future tenant need to reapply, or  
11 would it be grandfathered?

12 RANDY TSUDA: It can continue to exist under the  
13 existing permit if it's reactivated within one year. Under  
14 this proposal the applicant is not proposing any alcohol  
15 service and that's included in a conditional of approval.

16 COMMISSIONER KANE: So it may be a sunset in one  
17 year?

18 CHAIR TALESFORE: Yes.

19 RANDY TSUDA: Well if you grant this permit, the  
20 use permit is immediately changed, and alcohol service must  
21 cease once they open their business.

22 COMMISSIONER KANE: And the new tenant would need  
23 to reapply in the future? So it's gone?

24 RANDY TSUDA: If they wanted to restore the  
25 alcohol service, they would have to come back.

COMMISSIONER KANE: Thank you.

1 CHAIR TALESFORE: Thank you very much.  
2 Commissioner Micciche has a question for Staff.

3 COMMISSIONER MICCICHE: If they came back before  
4 the year was up, would they have to?

5 RANDY TSUDA: If you do not approve this permit or  
6 this applicant chooses not to implement the conditional use  
7 permit, chooses to reopen the previous Café Rouge business,  
8 they can do so under the previous CUP. Assuming you approve  
9 this permit, once it's implemented, it's done. The alcohol  
10 service goes away.

11 CHAIR TALESFORE: All right, so any other  
12 questions? Seeing none, I'd like to have the applicant,  
13 Jimmy Chang, come up to the podium and state your name and  
14 address for us. Thank you very much, and please adjust the  
15 microphone so we can hear you. Thank you.

16 JIMMY CHANG: My name is Jimmy Chang and I live at  
17 991 Alta Mar Terrace in San Jose, California. I'm here to  
18 represent the new Delatti proposal. We're here to request an  
19 approval to modify the existing conditional use permit to  
20 allow low-fat frozen yogurt as primary, and coffee and  
21 drinks, mostly ice-blended, as a secondary use or service  
22 for the business on this property.

23 We believe our proposed use is very suitable for  
24 the current location, given that the immediate surroundings  
25 are restaurants, retails, and actually right across the

1 street from Elm Street is a small gift shop, so given the  
2 conditions, we believe it's suitable.

3 Our store, we think it will bring more friendly  
4 environments, especially to the pedestrians who are walking  
5 along Elm Street and eventually North Santa Cruz Avenue,  
6 because there's a public parking lot, which kind of opens up  
7 right next to the store.

8 We are actually forfeiting our current use permit  
9 that allows alcohol and alcohol sales, and we're actually  
10 asking to provide healthy low fat tart frozen yogurts with  
11 fresh fruit toppings.

12 Our low fat tart soft-serve yogurt is actually  
13 very different from traditional frozen yogurts. It's really  
14 hard to describe the taste actually without tasting it, but  
15 if I may kind of compare the new frozen yogurt that we're  
16 proposing versus the traditional frozen yogurt, if you had  
17 an experience, say, with 31 Baskin-Robbins ice cream versus  
18 Italian gelato, there is a significant different. Yes, it is  
19 the same ice cream, if you were to categorize it, but as far  
20 as taste-wise, it is very different. We believe if someone  
21 likes the flavors that are provided by 31 Baskin-Robbins,  
22 they will go there. If someone likes the sherbets that are  
23 provided by Italian gelato, they will go there. So as far as  
24 the taste, that's an example of how it is different.

25 Also the new low fat tart, it's the tart part that  
provides the little bit more sour taste and is unlike the

1 traditional yogurt, which is creamier. It's hard to describe  
2 the taste.

3 Also in addition to that, we're proposing that it  
4 will have fresh fruit toppings, and our display on the  
5 counter has a topping area, which will be refrigerated and  
6 has the fresh toppings. As you can see on the business plan,  
7 we put the visual images there as a reference.

8 We believe our proposal will actually serve the  
9 neighborhoods. We did a survey and there are a lot of  
10 supporters who signed this document, and it was provided to  
11 you guys as a supplement. And also in a bigger area I think  
12 it just adds another store that's different and unique and  
13 one of the kinds in Los Gatos, and I think it still would  
14 add a lot of value to the community. That's it.

15 CHAIR TALESFORE: Do we have any questions of the  
16 applicant? Okay, I do as well. Commissioner Bourgeois, and  
17 then Commissioner Kane.

18 COMMISSIONER BOURGEOIS: Thank you for your  
19 presentation, for providing the business plan stuff in the  
20 packet; that was really good to see.

21 I just want to understand how familiar you are  
22 with our downtown. Between where you are and Main Street  
23 there are a number of ice cream, gelato, yogurt places, as  
24 well as coffee shops. You kept saying you're unique. How are  
25 you different from what's already there, and are you aware

1 of this kind of saturation of this use in this block? I'd  
2 just like your thoughts on this issue.

3 JIMMY CHANG: Actually, we are. When we were first  
4 putting together these business plans a few months ago, we  
5 did some marketing research and we are aware that there is I  
6 believe one that particularly says they have frozen yogurts.  
7 The way we see it is that that store is actually located  
8 more towards the Main Street, and actually all the reference  
9 stores are located on North Santa Cruz Avenue, whereas our  
10 location, it tends to serve more towards the Los Gatos  
11 Boulevard and the shopping area and Elm Street. So yes, it  
12 is a reasonable distance, but as far as the location, I  
13 think it serves a different area.

14 And two, as far as taste-wise, we didn't provide  
15 you with the other traditional frozen yogurt ingredient  
16 breakdowns, but if you look at the business plans, at least  
17 our machines are different. It's actually a private company  
18 that manufacturers the machines in Ohio, and that's where  
19 we're getting the machines, and so the mixture itself to  
20 create this soft-serve frozen yogurt is different, meaning  
21 the ingredients are a little different. The fat is  
22 significantly low, sugar is very minimal, and that's what we  
23 said: it's healthy frozen yogurt. It's really hard to  
24 describe the taste, but at least gelato was an example. It's  
25 not a gelato. It's not an ice cream. It is a frozen yogurt,  
in reference to your question.

1 CHAIR TALESFORE: Commissioner Kane, do you want  
2 to go next? Okay, Commissioner Sayoc.

3 COMMISSIONER SAYOC: Yes, all right. Thank you for  
4 your comments. Your concept and your business plan is very  
5 intriguing, but when you were looking at potential places,  
6 were there other places in consideration besides 42 Elm  
7 Street?

8 JIMMY CHANG: As far as I know, 42 Elm Street was  
9 the store that was available, and no, we did not look at the  
10 other locations, because the other locations weren't  
11 available.

12 CHAIR TALESFORE: Commissioner Kane, and then  
13 Commissioner Micciche.

14 COMMISSIONER KANE: The concept of Delatti is that  
15 someone has purchased a franchise?

16 JIMMY CHANG: No, it's not.

17 COUNSEL SABO: It's not a franchise?

18 JIMMY CHANG: No, it's a name that we came up  
19 with. Basically it's delicious, and we just came up with  
20 that name, so it's not a franchise, no.

21 COMMISSIONER KANE: Son of a gun, I misread it.  
22 This is a one and only store?

23 JIMMY CHANG: Yes. There are a lot of similar  
24 concepts given that it's a frozen yogurt, but as far as the  
25 store, yes, it is the only one.

1 COMMISSIONER KANE: I saw that. I had a reaction  
2 to the business plan; I thought it was being sent out by the  
3 holy city somewhere and you had to abide by their formula  
4 approach. You know the store that's in there now is a  
5 reasonably casual, friendly kind of place. I thought there  
6 was some corporate order that you had to wear these  
7 uniforms.

8 JIMMY CHANG: No, that's all designed by a graphic  
9 designer.

10 COMMISSIONER KANE: And you have the freedom to  
11 change if you need to?

12 JIMMY CHANG: Yes.

13 COMMISSIONER KANE: Thank you.

14 CHAIR TALESFORE: Can I just follow-up for a  
15 second? Were they just examples of what you're thinking  
16 about doing, or is this the actual?

17 JIMMY CHANG: Well, a graphic designer designed  
18 the logos, the words, and the image that was going to be on  
19 the apron. Recycled (inaudible) and all that, it was  
20 designed.

21 CHAIR TALESFORE: So is the answer yes?

22 JIMMY CHANG: Yes.

23 CHAIR TALESFORE: Thank you. Okay, Commissioner  
24 Micciche.

25 COMMISSIONER MICCICHE: It appears from your  
statement that you're unique and one of a kind stems from

LOS GATOS PLANNING COMMISSION 4/11/2007  
Item #4, 42 Elm Street

1 the fact that the nutritional value of this yogurt is  
2 different than other yogurts in town? Is that a correct  
3 statement?

4 JIMMY CHANG: Yes, that's a correct statement. In  
5 this town, yes.

6 COMMISSIONER MICCICHE: Excuse me?

7 JIMMY CHANG: In this Los Gatos town, yes.

8 COMMISSIONER MICCICHE: In this area, we're  
9 talking about, right?

10 JIMMY CHANG: Yes.

11 COMMISSIONER MICCICHE: So when Commissioner  
12 Bourgeois spoke about saturating the area, you don't feel  
13 you're saturating, because you've got something separate  
14 here, something different, is that right?

15 JIMMY CHANG: Yes.

16 COMMISSIONER MICCICHE: If a store like TCBY, I  
17 think is the name of it, were to add this feature, would you  
18 have an objection to that?

19 JIMMY CHANG: Our understanding of TCBY, yes, they  
20 advertise frozen yogurt, which is a traditional frozen  
21 yogurt, knowing that TCBY is a well known franchise, that we  
22 have an access to their ingredients, that it is a creamy  
23 traditional frozen yogurt.

24 On top of that, the current TCBY on North Santa  
25 Cruz Avenue, in addition to frozen yogurt, or advertisements  
that are dedicated to frozen yogurt, at least on the front

LOS GATOS PLANNING COMMISSION 4/11/2007  
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1 door they also advertise Mrs. Fields cookies. They also have  
2 a lot of fruit juices, like factory manufactured fruit  
3 juices in a container. So other than the frozen yogurt, I  
4 don't think we have any other items that are conflicting  
5 with that store, and what we are proposing in here.

6 COMMISSIONER MICCICHE: Excuse me, that wasn't my  
7 question. My question was if they were to add a nutritional  
8 yogurt to their menu, would you feel an objection to that?

9 JIMMY CHANG: If they purchase the same  
10 (inaudible) and start to serve to same frozen yogurt with  
11 the idea of serving the fruit toppings just like what we  
12 were kind of showing you as a visual image, yes, we may.

13 COMMISSIONER MICCICHE: Okay.

14 CHAIR TALESFORE: Okay, looking for just a motion  
15 to extend our meeting time.

16 COMMISSIONER MICCICHE: So moved.

17 COMMISSIONER KANE: So moved.

18 CHAIR TALESFORE: So moved. Okay, could I have a  
19 second? (Everyone seconds.) I love it. Okay, so how many  
20 vote in favor? All right, I'm going to call the motion. In  
21 favor of extending the meeting past 11:30? Opposed? None.

22 COMMISSIONER O'DONNELL: I want to make a motion.

23 CHAIR TALESFORE: Yes.

24 COMMISSIONER O'DONNELL: I want to move that  
25 (inaudible).

CHAIR TALESFORE: But one other thing.

1 COMMISSIONER O'DONNELL: We're still open.

2 CHAIR TALESFORE: We're still open.

3 COMMISSIONER O'DONNELL: (Inaudible).

4 CHAIR TALESFORE: Well there is. We have card. I  
5 have a speaker card.

6 COMMISSIONER O'DONNELL: Oh, you do? I'm sorry.

7 CHAIR TALESFORE: Yeah, I have a speaker card.

8 COMMISSIONER O'DONNELL: I withdraw my motion.

9 CHAIR TALESFORE: Okay. Thank you.

10 COMMISSIONER O'DONNELL: But I have a comment.  
11 (Inaudible) so far, I want to clarify, because I don't think  
12 we can say to somebody, "Gee whiz, there's a lot of yogurt  
13 in town." This is not a chain store; it's consistent with  
14 everything. If you wouldn't do this, that's fine, but I  
15 don't see any basis upon which we can say oh my gosh, there  
16 are a lot of ice cream and yogurt places. So I just wanted  
17 to get that out, because if there is some reason to be able  
18 to do that, I'd like to hear what it is.

19 COMMISSIONER KANE: If they're out of balance, we  
20 could, but they're not.

21 CHAIR TALESFORE: And Commissioners, I am going to  
22 tell you that there's also a desk item on this that was here  
23 tonight when you came in. Did you all have a chance to read  
24 that? I'm sorry to be reminding you of it now. Okay, thank  
25 you very much. And so I'd like to call up Jamie Kim.



1 JAMIE KIM: Hi, name is Jamie Kim and I'm from 13  
2 North Santa Cruz Avenue, TCBY, representing my parents as  
3 the owner of a TCBY store. It's actually my second time  
4 representing my parents at the hearings. The first time was  
5 last December at an appeal case of Powell's Sweet Shoppe.

6 However, today is a little bit different. I feel a  
7 different emotion because I'm here to ask of you to protect  
8 our business by regulating the permit for yogurt business  
9 for new shops. I have prepared a (inaudible), but I  
10 (inaudible).

11 CHAIR TALESFORE: That's all right. We're with  
12 you.

13 JAMIE KIM: Okay. No one else is here.

14 CHAIR TALESFORE: Just us.

15 JAMIE KIM: But to get straight to the point  
16 however, I'm here to request the Planning Commission to  
17 considering regulating permits to sell frozen yogurt  
18 products for the new store, in this case Café Delatti, and  
19 in the future other possible businesses.

20 As of now there are already five businesses that  
21 serve frozen treats, not even counting restaurants selling  
22 ice cream on their dessert menu. With the opening of the  
23 fifth store, which is Powell's Sweet Shoppe selling gelato  
24 last July, it has affected our business very much. Our sales  
25 have gone down over 30%, and we just had a long winter  
season of negative revenue. But we were still hopeful that

1 in the coming spring and summer season we'll be able to make  
2 up for the loss and continue our business to serve the  
3 customers and community, and also continue being part of  
4 this historical town as the TCBY store has been for the past  
5 16 years.

6 But when we heard of this new business coming in-  
7 we actually found out last Thursday-we were devastated.  
8 Having another frozen yogurt shop within one block from our  
9 location selling basically the same product will hurt our  
10 business even more, but not only our store, but also other  
11 frozen treat shops in downtown. I am not being skeptical or  
12 pessimistic, but it is clear that it will be very difficult  
13 for us to make up for the rent and other operation expenses,  
14 and therefore unable to sustain our business any further.  
15 There is only so much we can do to make up for the loss. My  
16 parents are already working every day, many hours, so they  
17 can save money on the payroll, and they are using their own  
18 savings to maintain the business.

19 Competition is good for the customers and also for  
20 the businesses as they motivate them to continue to make  
21 improvements in their service and quality of their business,  
22 but it only works when it is balanced. Only when businesses  
23 are capable of bettering their business both financially and  
24 resourcefully without compromising the quality of their  
25 product and service, it will benefit both customer and the  
business. In this case it is not balanced. There are just

1 too many frozen sweet treat shops in this small downtown,  
2 especially on Santa Cruz Avenue around the Main Street.  
3 Really, how many ice cream stores does a block of downtown  
4 need?

5 TCBY has been a part of the Town's history for the  
6 past 16 years. I believe it is one of the oldest businesses  
7 in the downtown and we are proud to be part of it. It has  
8 been the place where a whole family can come in for yummy  
9 yogurt, for young people to hang out, and older people to  
10 come in and relax and enjoy the yogurt. We hope to continue  
11 to be part of the Town of Los Gatos for many years to come  
12 and to serve the customers and community, so please consider  
13 helping and protecting existing business by regulating  
14 permits to sell similar items, in this case regulating  
15 permits to sell frozen yogurt products for Café Delatti.

16 By no means are we denying their coming into the  
17 town, but it's just the product they're selling, and they  
18 insist it's a unique different yogurt, but to people it's  
19 just ice cream.

20 CHAIR TALESFORE: Okay. Commissioner Kane, do you  
21 have a question?

22 COMMISSIONER KANE: I have a question for Staff.  
23 Mr. Tsuda, it carries on what Commissioner O'Donnell was  
24 saying, that what we're being asked to do. I was wondering  
25 if you could comment to the speaker. I don't think we have  
the authority to make that kind of policy.

1 RANDY TSUDA: You do not have the ability to  
2 regulate market share, regulate business. What you have  
3 before you is a land use decision, and it needs to be based  
4 on the General Plan and the Town Code, and that's what will  
5 ultimately guide your decision tonight will be those land  
6 use policies, not the marketplace.

7 COMMISSIONER KANE: Okay. Thank you.

8 CHAIR TALESFORE: I just wanted to ask the  
9 speaker, do you understand that?

10 JAMIE KIM: Yes, I do, but I know it's ultimately  
11 your decision to review the business plan and grant the  
12 permit or not, and it would really affect existing business  
13 as to whether they can sustain or not.

14 CHAIR TALESFORE: Commissioner Micciche.

15 COMMISSIONER MICCICHE: I'm very familiar with  
16 your store. In fact, my children love to go there to get  
17 cookies from Mrs. Field. Does TCBY allow you to add products  
18 to the line, or are you compelled to use what they give you?

19 JAMIE KIM: We have very strict guidelines by the  
20 franchise to the ingredients or even to the amount of the  
21 serving; everything is dictated by the franchise. And even  
22 we want to make a different modification or improvements to  
23 the store, but it is also regulated, so we cannot compete  
24 with privately owned stores where they could use a graphic  
25 designer to design their uniform or whatever they can do.

1 COMMISSIONER MICCICHE: Have you looked at the  
2 nutritional value list that they have on theirs? Did you see  
3 this report?

4 JAMIE KIM: Well I didn't have a chance to look at  
5 it until just a few hours ago, right outside.

6 COMMISSIONER MICCICHE: So you do you know if you  
7 have any product that matches thief's nutritionally?

8 JAMIE KIM: Oh yes, actually TCBY as a franchise  
9 guarantees their product and the quality of their product,  
10 and we do serve no-sugar, non-fat yogurt in a variety of  
11 flavors. We have hard yogurt, we have sweet yogurt.

12 COMMISSIONER MICCICHE: So you feel you have a  
13 competitive product, an equal product, to them?

14 JAMIE KIM: Yes.

15 COMMISSIONER MICCICHE: Thank you.

16 CHAIR TALESFORE: And you've been in the town for  
17 how long?

18 JAMIE KIM: My parents took over the store about a  
19 year-and-a-half ago.

20 CHAIR TALESFORE: Thank you very much. But the  
21 store has been for sixteen years.

22 JAMIE KIM: Sixteen years.

23 CHAIR TALESFORE: Yes, that's what I wanted to  
24 know. Thank you very much. Okay, thank you. And I'd like to  
25 call the applicant back up for a rebuttal, if you want. If  
not, it's fine; you don't have to say anything.

LOS GATOS PLANNING COMMISSION 4/11/2007  
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1 JIMMY CHANG: Well I just have a couple I guess  
2 lines to you to say. Obviously we're not here to add another  
3 competition. We feel like it's a different product,  
4 different item. As you can see, we felt like there is a  
5 demand in the neighborhood, because there are obviously 50  
6 people-50 people is what we've given you-but they are a  
7 mixture of residents of Los Gatos town and also the business  
8 owners, and you can indicate them by their business name and  
9 their address. We felt like that's evidence that there is  
10 more demand for a new kind of low-fat frozen yogurt, a  
healthier product.

11 CHAIR TALESFORE: Thank you. Any questions? I have  
12 a question. Are you planning on serving anything besides the  
13 ice cream, such as cookies, sandwiches? Nothing, okay.

14 JIMMY CHANG: No.

15 CHAIR TALESFORE: All right, well thank you very  
16 much. I'm going to have you sit down, and Commissioners,  
17 discussion, questions?

18 COMMISSIONER MICCICHE: Shouldn't you close the  
19 public hearing?

20 CHAIR TALESFORE: Oh yes, I'm closing the public  
21 hearing. Commissioners, questions? Commissioner O'Donnell.

22 COMMISSIONER O'DONNELL: I just want to, at least  
23 from my understanding, make it quite clear, because I'm very  
24 sympathetic with what the TCBY people are saying, but I  
25 don't know that you understand what our authority is.

LOS GATOS PLANNING COMMISSION 4/11/2007  
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1 We've been told it's a land use decision. We  
2 cannot regulate whether there are two or ten, at least to my  
3 knowledge we can't, so we are making a land use decision  
4 only, whether after hearing what you're saying about how  
5 hard business is, which I believe you, whether it is a wise  
6 decision to do what they're doing, we can't tell people how  
7 to run their business, so I just want that to be clear,  
8 because we're not trying to hurt your business, and  
9 hopefully you're not trying to hurt your business, but  
10 that's not the point.

11 In any event, I would like to make a motion that I  
12 feel we're constrained to make, and that motion would be  
13 approve the conditional use permit and the findings would be  
14 that it is exempt under CEQA, that it is justified, it's  
15 desirable for public convenience and welfare, would not  
16 impair the integrity and character of the zone, it would not  
17 be detrimental to the public health, safety, or general  
18 welfare, and the use is in harmony with the various elements  
19 and objectives of the General Plan and purpose of the Town  
20 Code. The proposed project is consistent with the  
21 redevelopment plan for central Los Gatos Redevelopment  
22 Project area. That's the motion.

23 CHAIR TALESFORE: We have a motion in progress. Do  
24 I have a second?

25 COMMISSIONER MICCICHE: I second.

1 CHAIR TALESFORE: Okay, we have a second from  
2 Commissioner Micciche. Discussion?

3 I'm sitting here not knowing how I feel about it,  
4 because I do feel that there's a cluster of ice cream  
5 establishments. On the other hand, I feel that the location  
6 of this shop is actually almost in another neighborhood, and  
7 it does serve people that may not come upon it. I mean I  
8 know how it felt when I was using it as Café Rouge, or  
9 before that, the coffee store that was there, so I don't  
10 know, I'm sitting somewhere there, whatever that means.

11 Commissioner Bourgeois, and then Commissioner  
12 Sayoc.

13 COMMISSIONER BOURGEOIS: I am going to support the  
14 motion, but I do think that as a land use decision we do  
15 have the ability, if we think there's an over-concentration  
16 of a use, then we can make the decision based on that.

17 CHAIR TALESFORE: Mmm-hmm.

18 COMMISSIONER BOURGEOIS: I am torn on this and I'm  
19 very sympathetic to the existing businesses. We've had this  
20 discussion numerous times. We've had it for Powell's, we've  
21 had it for Cold Stone Creamery. I mean this issue has been  
22 talked to death on this block, but the bottom line for this  
23 parcel, for this property, we're going from coffee and wine  
24 to coffee and tea and yogurt, and they're giving up their  
25 alcohol and they're reducing their hours. I mean I can't see

1 voting against this applicant, but I do think that use is a  
2 concern to me in that district.

3 CHAIR TALESFORE: Commissioner Kane.

4 COMMISSIONER KANE: I expect I'll be supporting  
5 the motion, but I would ask again of Mr. Tsuda, we have one  
6 here, we have one there, we have one there. When Planning  
7 has the sense that we have one here and when you start to  
8 get concerned, when you first hear of the protest from a  
9 merchant, maybe then we could do a market study, a  
10 saturation study, because what we don't want to do is add to  
11 critical mass and bring in a sixth one and they all fail.  
12 I'm just thinking when you hear something out there, when  
13 you hear a protest, maybe we should do a market study or  
14 determine that we're approaching a saturation point and we  
15 do need to be careful, and that we can rule on, but it's not  
16 in this report, so I'm assuming it's not relevant, but I  
17 would say that we're getting close to that point of  
18 relevance if a merchant is losing 30% and having trouble  
19 surviving.

19 CHAIR TALESFORE: But Commissioner Kane, I don't  
20 think we can rule on market... I don't know what the market  
21 (inaudible).

22 COMMISSIONER KANE: We can rule on anything  
23 deleterious to the Town and if all six of them are going to  
24 fail, I'd rule on it.  
25

1 CHAIR TALESFORE: But it's more effective and what  
2 we do rule on is the land use.

3 RANDY TSUDA: I think what the Commissioner seems  
4 to be raising is a larger policy question here that goes  
5 beyond this particular application. What I would suggest is  
6 given this trend that we're seeing in the downtown, if it is  
7 a trend, that we raise this in our discussion with the  
8 Council at the upcoming retreat.

9 CHAIR TALESFORE: I wanted to get back on this for  
10 a second. Can we do that after we vote on this motion? I  
11 would like to capture that so it's not lost.

12 RANDY TSUDA: You can capture that after you make  
13 the motion.

14 CHAIR TALESFORE: Thank you. Commissioner  
15 Micciche.

16 COMMISSIONER MICCICHE: What I was going to  
17 suggest, and we've done this before, as part of this motion,  
18 is we send a strong recommendation to the Council to look at  
19 this issue of saturation of any item, since we're being  
20 confronted with it, so I'd like to make it part of the  
21 motion that we're sending the recommendation along to the  
22 Town Council. We've done that before.

23 CHAIR TALESFORE: Could that be part of the  
24 motion? No.

25 COMMISSIONER MICCICHE: We've done it before.

CHAIR TALESFORE: Commissioner O'Donnell.

1 COMMISSIONER O'DONNELL: Before responding to  
2 that, let me say this. I think that Commissioner Bourgeois  
3 raises a good point. You'll recall when we voted down the  
4 ice cream place at Lyndon Plaza we were reversed by the Town  
5 Council on some basis.

6 CHAIR TALESFORE: Yes.

7 COMMISSIONER O'DONNELL: We felt at that point  
8 there was an over saturation of ice cream places in Los  
9 Gatos and the Town Council said baloney. Now why the baloney  
10 was, anybody's guess is as good as mine. I do think that  
11 John is correct. At some point you can say too much is too  
12 much. You don't have to get into the economic analysis that  
13 Commissioner Kane is getting into, because that really kind  
14 isn't that. We're thinking of the Town, and we can say wait  
15 a minute, if everybody wants to sell ice cream, this isn't a  
16 balanced town. If everybody wants to sell sweatshirts, this  
17 isn't a balanced town. So that's got nothing to do with  
18 whether everybody can get rich selling sweatshirts, it's  
19 like do we want to have a town that only sells sweatshirts?

20 So here I would agree. If you've got every other  
21 store is going to sell ice cream of whatever, that's not  
22 right. So yes, we can get to a point where there are too  
23 many, and to the extent that I suggested otherwise, I was  
24 wrong, and I think John's point is well taken. So even  
25 though I have made the motion, I would invite anybody to  
tell me that they really feel within let's say a five block

1 area, or a six block area, that we just have too many and  
2 this would be the straw that broke the camel's back, not  
3 from an economic standpoint, but from the idea of having  
4 balance in our community so that our citizens will want to  
5 come downtown. I don't think yogurt shops are going to be  
6 destination shopping. So I'm inviting some criticism of my  
7 motion.

8 CHAIR TALESFORE: Would like to go before me,  
9 Commissioner Micciche, because I have a comment?

10 COMMISSIONER MICCICHE: Yeah, I'd like to change  
11 my comment before and say that I'm against the motion now. I  
12 think Commissioner O'Donnell has presented a good case for  
13 us challenging the existing policy.

14 CHAIR TALESFORE: And I will weigh in with three  
15 things. One is Commissioner O'Donnell, when you referred to  
16 the ice cream store at Lyndon, that was Cold Stone Creamery,  
17 and one of the reasons that the Commission did turn it down  
18 was because it was a franchise whose other store was less  
19 than a mile away from it and there was that policy that they  
20 couldn't have two stores within a mile of each other. That's  
21 the franchise policy.

22 And there was also when we had the American  
23 Apparel here, it was for another T-shirt store and we have a  
24 lot of stores that sell T-shirts. So I was on the fence  
25 before; I don't think I am now on this. I mean I think the  
plan that they presented, I was impressed with it. I don't

1 think we can do any kind of market analysis as far as  
2 economics are concerned on this, but I do think we can do  
3 land use policy. I think this does lean toward over-  
4 concentration in that very small area, plus the idea of  
5 other restaurants, so I'm probably not going to support the  
6 motion.

7 COMMISSIONER O'DONNELL: I'm going to withdraw my  
8 motion.

9 COMMISSIONER MICCICHE: Excuse me, I'm going to  
10 withdraw my second.

11 COMMISSIONER O'DONNELL: Okay.

12 CHAIR TALESFORE: Wait a minute, let's withdraw  
13 the motion, and we're withdrawing the second. Commissioner  
14 O'Donnell.

15 COMMISSIONER O'DONNELL: Let me withdraw it and  
16 let me explain. I still tend to think that from a legal  
17 standpoint the motion is probably well taken. But I do think  
18 from a Town planning standpoint, how many is enough, and how  
19 many is too much? And I can tell you from living here that  
20 there is no shortage of ice cream or yogurt.

21 CHAIR TALESFORE: Yeah.

22 COMMISSIONER O'DONNELL: In fact, if anything,  
23 there are too many. So having been reminded of the  
24 saturation issue, I just don't want to make that motion, so  
25 I withdraw it.

1 CHAIR TALESFORE: Okay, and let's reflect that  
2 Commissioner Micciche also withdrew his second. I would tend  
3 to agree with Commissioner O'Donnell and Commissioner  
4 Micciche, and also adding into that, it's also yogurt plus  
5 coffee plus teas, which we have those stores as well. So  
6 Commissioner Sayoc, you had a comment?

7 COMMISSIONER SAYOC: Well the motion has been  
8 withdrawn, so I guess not. I was going to say that I was not  
9 going to support the motion. Instead, how about I throw out  
10 a motion?

11 CHAIR TALESFORE: Commissioner Sayoc, we'd like  
12 that.

13 COMMISSIONER SAYOC: I move to deny the  
14 application, because the General Plan states that we should  
15 provide a mix of commercial and industrial land uses to  
16 maintain a full-service town, and I believe the proposed use  
17 will create a disbalance to an already over-saturated  
18 market.

19 CHAIR TALESFORE: We have a motion for denial due  
20 to over-saturation.

21 COMMISSIONER MICCICHE: I second.

22 CHAIR TALESFORE: Seconded by Commissioner  
23 Micciche. Okay, thank you, Commissioner Micciche. Unless I  
24 have somebody with a burning desire to say anything, I'm  
25 going to call for the motion. Thank you. All those in favor

1 say aye. Opposed? So it's two nays and four ayes, so the  
2 motion passes.

3 ORRY KORB: Just note for the record,  
4 Commissioners Bourgeois and Kane were in opposition. Appeal  
5 rights. This decision is appealable to the Town Council. The  
6 decision must be appealed within ten days and appeal forms  
7 are available upstairs at the Town Clerk's office.

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Date: April 5, 2007  
For Agenda Of: April 11, 2007  
Agenda Item: 4

REPORT TO: The Planning Commission  
FROM: The Director of Community Development  
LOCATION: 42 Elm Street  
Conditional Use Permit U-07-24

Requesting approval to modify an existing conditional use permit (Café Rouge) to allow a coffee and yogurt business (Café Delatti) on property zoned C-2. APN 529-03-035  
PROPERTY OWNER: Michael Cobler  
APPLICANT: Suh Chung Kim

DEEMED COMPLETE: March 22, 2007  
FINAL DATE TO TAKE ACTION BY: September 22, 2007

FINDINGS:

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

ACTION: The decision of the Planning Commission is final unless appealed within ten days.

EXHIBITS:

- A. Required Findings (1 page)
- B. Recommended Conditions of Approval (2 pages)
- C. Existing Conditions of Approval for 42 Elm Street (2 pages)
- D. Letter of Justification/Project Description (11 pages), received March 22, 2007
- E. Development Plans, received March 22, 2007 (3 pages)

A. DESCRIPTION:

The applicant (Café Delatti) is requesting approval to modify the existing Conditional Use Permit (CUP) for 42 Elm Street to permit the following:

- A high turnover/sit down restaurant that will serve organic coffee drinks, frozen yogurt, flavored teas, and fruit smoothies;
- A total of 12 seats indoors and outdoors; and
- Hours of operation from 10:00 AM to 9:00 PM.

Please see Exhibit D for further information regarding the applicant's justification for the proposed modifications.

B. BACKGROUND

*42 Elm Street (Café Rouge)*

The previous tenant at 42 Elm Street (Café Rouge) received approval for a Conditional Use Permit (CUP) on August 21, 2006 for a high turnover/sit-down restaurant which allowed:

- A total of 12 seats, indoors and outdoors;
- Beer and wine service with meals;
- Wine tasting;
- Hours of operation from 6:00 AM to 1:00 AM seven days a week;
- Alcohol service and retail alcohol sales limited between the hours of 11:00 AM to 11:00 PM; and
- Outdoor seating

The existing Conditions of Approval are included as Exhibit C.

C. DISCUSSION

*Conditional Use Permit*

Café Delatti would be the owner's only restaurant serving this type of food and beverages. Restaurants in the C-2 district require a Conditional Use Permit (CUP). The applicant is proposing to reduce the hours of operation to 10:00 AM to 9:00 PM from 6:00 AM to 1:00 AM. The applicant will discontinue all alcohol service, wine tasting, and retail alcohol sales. The applicant will maintain 12 seats, indoors and outdoors, which is the same as Café Rouge.

*Parking*

There are no onsite parking spaces, however; the subject site has 15 parking spaces within the Parking Assessment District (PAD). The existing CUP permits 12 seats, and the applicant is not requesting approval for additional seats. Therefore, the existing three spaces in the PAD that are allocated to this tenant space provide the required parking for the

proposed use.

The following table shows the existing and proposed uses, and required parking for the project site.

Use	Parking Ratio	Square Feet/ Number of Seats	Required Parking	Parking Provided
Retail	1/300 s.f.	2,423 s.f.	8	8
Personal Service	1/300 s.f.	1,152 s.f.	4	4
Café Delatti	1 space/4 seats	12 seats	3	3
<b>Total</b>			<b>15 in PAD 0 on site</b>	<b>15 in PAD 0 on site</b>

#### D. GENERAL PLAN CONFORMANCE

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

- L.P.1.3 - Encourage economic and social activity consistent with a small-scale, small town atmosphere and image.
- L.P.5.1 - Maintain a variety of commercial uses (a strong downtown commercial area combined with Los Gatos Blvd and strong neighborhood commercial centers) to meet the shopping needs of residents and to preserve the small-town atmosphere.
- L.P.5.2 - Encourage a mix of retail, office and professional uses in commercial areas, except in the Central Business District where retail should be emphasized.
- L.P.5.5 - Encourage the development and retention of locally-owned stores and shops.
- L.G.1.1 - To preserve, promote, and protect the existing small town character and quality of life within Los Gatos.
- L.G.5.2 - To maintain a balanced, economically stable community within environmental goals.
- L.G.6.2 - Preserve downtown Los Gatos as the historic center of the Town with goods and services for local residents while maintaining the existing Town identity, environment and commercial viability.

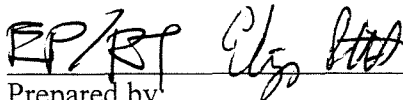
E. RECOMMENDATION:

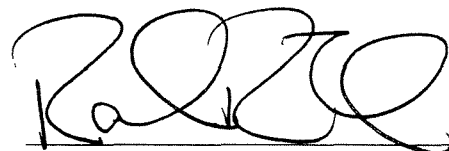
If the Planning Commission finds merit with the proposal, it should:

1. Make the required findings (Exhibit A); and
2. Approve the application subject to the recommended conditions of approval (Exhibit B) and development plans (Exhibit E).

If the Planning Commission has concerns with the application, they may:

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

  
Prepared by:  
Elizabeth Pettis, Assistant Planner

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

BNL:RT:EP:

cc: Suh Chung Kim, 3098 Butte Street, Santa Clara, CA 95051  
Mike Cobler, 900 East Campbell Avenue, Campbell, CA 95008  
Jimmy Chang, 991 Alta Mar Terrace, San Jose, CA 95126

## **CONDITIONS OF APPROVAL FOR:**

**42 Elm Street**

**Conditional Use Permit U-06-20**

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

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

**PROPERTY OWNER: Michael Cobler**

**APPLICANT: Belghis and Farhad Proushani**

**TO THE SATISFACTION OF THE COMMUNITY DEVELOPMENT DIRECTOR:**

(Planning Section)

1. **CONDITIONS:** These conditions of approval shall supercede all previously adopted conditions.
2. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as Exhibit I in the report to the Planning Commission. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development or the Planning Commission, depending on the scope of the changes.
3. **LAPSE FOR DISCONTINUANCE:** If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
4. **USE:** The approved use is a high turnover (sit-down) restaurant as defined by the Zoning Ordinance.
5. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 12 seats total (indoor and outdoor).
6. **HOURS OF OPERATION:** Hours of operation for the restaurant shall be 6:00 a.m. to 1:00 a.m. seven days a week. Service of wine and the retail sale of wine shall be limited to 11:00 AM to 10:00 PM, seven days a week.
7. **WINE SALES:** The service of wine by the glass for the restaurant is permitted, indoors and outdoors, only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. Retail sale of wine for off-site consumption is permitted from 11:00 AM to 10:00 PM, seven days a week.
8. **WINE TASTING:** Wine tasting is permitted indoors only. The maximum sample size for the tasting shall not exceed one ounce.
9. **OUTDOOR AREA:** The design of improvements to the outdoor area must be approved by the Chief of Police, the Community Development Director, and Director of Public Works prior to installation. The Chief of Police will review the proposal for public safety. The Director of Public Works will review the proposal for landscaping, proper separation between landscaped areas, loading zone and pedestrian ramp.
10. **TAKE OUT:** Take out food shall be served in recycled material containers.
11. **UTENSILS:** All beverages and food served on site shall be served on reusable materials.
12. **TRASH:** Operators of the restaurant shall pick up trash in the vicinity of the restaurant when outdoor seating is available.
13. **SPECIAL EVENTS:** Wine tasting lectures, community meetings and private (invitation only) events are allowed. These events are limited to once a month and during hours of operation. Alcohol service and entertainment is not permitted during these events.

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

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

15. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
16. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
17. OUTDOOR TRASH ENCLOSURES. Within 60 days of issuance of a conditional use permit, outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided within the enclosure.
18. GREASE TRAPS. Meet all requirement of the Santa Clara County Health Department and West Valley Sanitation District for the interception, separation or pretreatment of effluent.
19. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

Date: April 11, 2007  
For Agenda Of: April 11, 2007  
Agenda Item: 4  
**DESK ITEM**

REPORT TO: The Planning Commission  
FROM: The Director of Community Development  
LOCATION: 42 Elm Street  
Conditional Use Permit U-07-24

Requesting approval to modify an existing conditional use permit (Café Rouge) to allow a coffee and yogurt business (Café Delatti) on property zoned C-2. APN 529-03-035  
PROPERTY OWNER: Michael Cobler  
APPLICANT: Suh Chung Kim

EXHIBITS: A-E. Previously Submitted  
F. Petition of Support (5 pages) (received April 10, 2007)  
G. Letter of Opposition (2 pages) (received April 11, 2007)

REMARKS:

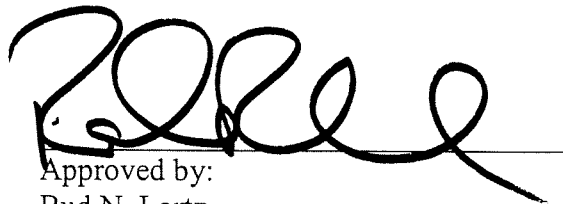
Exhibit F (a petition in support of the project) and Exhibit G (a letter in opposition of the project) were submitted after the report on this matter was finalized.



Prepared by:  
Elizabeth Pettis, Assistant Planner

BNL:RT:EP:

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





Business Supporters for Opening "**Delatti Cafe(Frozen Yogurt)**"

in Downtown Los Gatos Business District

April, 9, 2007

Surveyors:

Seo Jung Kim (owner)

Daisuke Nitta

Wei Tien Pang

Store Location: 42 Elm Street, Los Gatos, CA

**EXHIBIT F**

Business Supporters for Opening "Delatti Cafe(Frozen Yogurt )" in Downtown Los Gatos Business District

No	Name	Address
	Tim CANNARD	52 N. Santa Cruz
Date	Store Name or Comments	
4/7/07	Motor Cellular	
No	Name	Address
	Ashley Abbateili	50 N. Santa Cruz
Date	Store Name or Comments	
4/8/07	Rouge	
No	Name	Address
	Christina vonKassler	100 N. Santa Cruz
Date	Store Name or Comments	
4-9-07	Leaf + Petal	
No	Name	Address
	Ellen Weyer	100 N. Santa Cruz Ave.
Date	Store Name or Comments	
4/9/07	Purrnickety + Bow Wowzei-	
No	Name	Address
	Jane Wong	120 N. Santa Cruz Ave
Date	Store Name or Comments	
4/9/07	Gap Kids	
No	Name	Address
	J. Villalaz	122 N. Santa Cruz
Date	Store Name or Comments	
4/9/07	William Senever	
No	Name	Address
	Alexandre Reitor	222 North Santa Cruz Avenue Los Gatos 95030
Date	Store Name or Comments	
4/9/07	Inner Journey	
No	Name	Address
4	The Dinh	284 N. Santa Cruz Ave, Los Gatos 95
Date	Store Name or Comments	
4/9/07	Nails Emporium	
No	Name	Address
	Leslie Robidoux	320 N. Santa Cruz
Date	Store Name or Comments	
	Bettinas	More Truffles the better
No	Name	Address
	Yokohama	336 N. Santa Cruz Ave.
Date	Store Name or Comments	
4/9/07	Yokohama	

Business Supporters for Opening "Delatti Cafe(Frozen Yogurt)" in Downtown Los Gatos Business District

No	Name	Address
	Veronica Nunez	380 N. Santa Cruz Ave
Date	Store Name or Comments	
	04-09-07 Eye contact	
No	Name	Address
	DARIN DENINCENZI	
Date	Store Name or Comments	
	4/9/07 DOUBLE D'S SPORTS GRILLE	
No	Name	Address
	Fantastic Sam's	347 N SANTA CRUZ AVE LOS GATOS
Date	Store Name or Comments	
	CA 95030	
No	Name	Address
	Randa Welch	233 N. Santa Cruz Ave.
Date	Store Name or Comments	
	4/9/07 LG Vision Care	
No	Name	Address
	Crossroads Bicycles	217 N. Santa Cruz Ave
	Michael Tewart	<del>347 N. Santa Cruz Ave</del>
Date	Store Name or Comments	
	4-9 Crossroads Bicycles	
No	Name	Address
	LA MODE NAIL	155 N. SANTA CRUZ #7
Date	Store Name or Comments	
	4/9/07 LA MODE NAIL	
No	Name	Address
	Suejin Kim	151 N. Santa Cruz Ave.
Date	Store Name or Comments	
	4/9/07 Malci Yaki	
No	Name	Address
	Meredith Huston	151 N. Santa Cruz Ave
Date	Store Name or Comments	
	Salon Mona Lisa Los Gatos	
No	Name	Address
	Gina B	145 N Santa Cruz Ave.
Date	Store Name or Comments	
	Bella Rosa Boutique	
No	Name	Address
	Ryan E	139 N Santa Cruz
Date	Store Name or Comments	
	4/9/07 Kid in a candy store	

Business Supporters for Opening "Delatti Cafe(Frozen Yogurt)" in Downtown Los Gatos Business District

No	Name	Address
	SALLY PIERSON	15300 FRANCIS OAKS WAY, LOS GATOS CA
Date	Store Name or Comments	
04/04/07	17352	
No	Name	Address
	JULIANO PONCE	1015 SANTA FE BLVD, LOS GATOS, CA
Date	Store Name or Comments	
4/5/07	23241712 317692	
No	Name	Address
	John Prosser	141 Piedmont Ct, Los Gatos, CA
Date	Store Name or Comments	
4/9/07	SPORT GALLERY	
No	Name	Address
	David...	...
Date	Store Name or Comments	
4/9/07	Round Table	
No	Name	Address
	Cody Steward	3665 El Grande dr San Jose CA 95132
Date	Store Name or Comments	
4/9	Sprockets / Silicon Valley	
No	Name	Address
4/9	George Curo	513 University Ave
Date	Store Name or Comments	
	Los Gatos Bakery	
No	Name	Address
	Bessie Mortenson	201 N. Santa Cruz Ave
Date	Store Name or Comments	
4/9/07	Harvest Home Stores	
No	Name	Address
	Diane Menian	17 1/2 N. Santa Cruz Ave
Date	Store Name or Comments	
4/9/07	Los Gatos Company	
No	Name	Address
	Angelique LaFramboise	11 N Santa Cruz Ave
Date	Store Name or Comments	
	Peabody Gallery	
No	Name	Address
	Fabiola Var...	7 N. Santa Cruz Ave
Date	Store Name or Comments	

Business Supporters for Opening "Delatti Cafe(Frozen Yogurt)" in Downtown Los Gatos Business District

No	Name	Address
	CHERISSE K. Shoemaker	5 NORTH Santa CRUZ AVE CA 95030
Date	Store Name or Comments	
	Gymboree	
No	Name	Address
	NORMA VALENTA	135 RIVER ST APT 510 LOS GATOS
Date	Store Name or Comments	
	4/9/07	
No	Name	Address
	Anna Sung	22 S Santa Cruz ave LOS GATOS, CA 95030
Date	Store Name or Comments	
	4/9/07 Emily Orchids	
No	Name	Address
	Wm. J. Juvik	315 S. Navarra Scotts Vly
Date	Store Name or Comments	
	4/9/07	
No	Name	Address
	4/9/07 Brian Harman	1469 Lundy Rd St 2508
Date	Store Name or Comments	
No	Name	Address
	John Knaprows	45 W. Main St
Date	Store Name or Comments	
	7/9 Peckford Wineries	
No	Name	Address
	Alisha Jeffcoats	88 W. Main
Date	Store Name or Comments	
	4/9 All Good	
No	Name	Address
	JANET HUI	120 W MAIN ST.
Date	Store Name or Comments	
	4/9/07 INFINITI BOUTIQUE	
No	Name	Address
	Elias Gomez	120 W Main St.
Date	Store Name or Comments	
	4/9/07 INFINITI BOUTIQUE	
No	Name	Address
	Joseph M. Murrell	150 W. main st. 95030
Date	Store Name or Comments	
	JOSEPH A. BANK	

Business Supporters for Opening "Delatti Cafe(Frozen Yogurt)" in Downtown Los Gatos Business District

No	Name	Address
	Brenda Christine	1000 1st St
Date	Store Name or Comments	
4-29-07	L.A. Cafe	
No	Name	Address
	Muchida Samanta	1000 1st St
Date	Store Name or Comments	
7/9/07	We have been working for the cafe	
No	Name	Address
	Debra	1000 1st St
Date	Store Name or Comments	
No	Name	Address
	Mr. Torres	14 N Santa Cruz Ave Los Gatos CA 95030
Date	Store Name or Comments	
4/09/07	Play	
No	Name	Address
	Provincia Schaeffer	26 N Santa Cruz 95020
Date	Store Name or Comments	
	Smith + Hacker	
No	Name	Address
4/10/07	Natasha Tankley	
Date	Store Name or Comments	
	Natasha Los Gatos	
No	Name	Address
4/10/07	Jill Weber	
Date	Store Name or Comments	
	White House Black Market LG, CA	
No	Name	Address
	LISA Hermosillo	126 Creekside Village Drive
Date	Store Name or Comments	
4-9-07		
No	Name	Address
	Tal Mashhadian	51 F University Ave Los Gatos
Date	Store Name or Comments	
4/9	Life Line	
No	Name	Address
	Masha Mashhadian	51 F University Ave Los Gatos
Date	Store Name or Comments	
4/9	Life Line Illuminations	

April 11, 2007

Dear Planning Commissioners of City of Los Gatos,

My name is Jamie Kim and I am a daughter of Mr. Iron (Se Bok) Park, the owner of the TCBY/Mrs.Fields store on 13 N. Santa Cruz.

We are writing this letter in regards to the new yogurt store planning to open in downtown Los Gatos, at 42 Elm St. We would like to present few points as to why we are requesting the City of Los Gatos to consider disapproving the conditional use permission to sell frozen yogurt product at this new store, Café Delatti.

First, here is a history of how my parents have come to own TCBY store in downtown Los Gatos which first opened its doors in 1991. They are Korean immigrants who came to the U.S. with the dream of starting their new life after retiring in Korea. Through many years of visiting the Bay Area, they fell in love with the town of Los Gatos for its beautiful and friendly atmosphere. At that time, they only dreamed of becoming a part of this town someday. In Nov.2005, they finally had an opportunity to acquire a business which took great investment of their retirement fund. In hopes to succeed in a very competitive market, they have worked extremely hard in trying to generate a good reputation with quality products while serving and giving to the community through various means of donation and service. We also employ students and individuals from this community and are active in community work. We have been actively participating in community event and making donations to local schools. Also, TCBY as a franchise has high standard of quality and service which we would like to meet and even exceed. Since we have taken over the store over 1 year ago, we have made improvements to the store to make it a more pleasing experience for each of our customers. We even purchased new yogurt machines recently to improve quality of the product.

With four different stores selling frozen treats (frozen yogurt, smoothies, ice cream, gelato, etc.) already in downtown Los Gatos alone, the fifth store opened in July of 2006. Since the opening of Powell's only few doors down from TCBY, we have noticed a considerable loss of sales (over 30%) and revenue. Although we have managed to survive and keep afloat with a very small margin of profit without compromising the quality of our service and product to the customer and to the community, we are at very difficult situation right now. And with possibility of another yogurt store opening within one block of vicinity which clearly means that our sales and business will be reduced even more, we are not sure how much longer we can sustain the business.

Although we understand that an individual or group holds the right to open any business of their choosing, we feel that saturating one area of downtown Los Gatos with another yogurt store will cause ours and other stores selling frozen treats to suffer. With the high cost of rent, the franchise fee and daily operating expenses, the margin of profit for a store like TCBY is very low, especially frozen yogurt is a very weather sensitive and seasonal items.

It is our desire for our store, TCBY, to continue to be a part of the history of this beautiful town as it has been for past 16 years, and to be established in downtown Los Gatos as a family friendly business for many years to come. But with another store in direct competition to ours within one block of vicinity, we fear that the impact this new store will have on ours may cause us to close our doors.

Please consider the loss that the city and the downtown Los Gatos may take with the absence of TCBY which has been here for over 16 years in the same location. We hope the planning commission will consider protecting existing businesses by regulating permit to sell similar items for the new business. In this particular case, we are petitioning for the planning commission to regulate permit to sell frozen yogurt product for the new store.

We thank you for allowing us to present our point of view in this matter.  
We also thank you for your consideration.

Regards,

A handwritten signature in cursive script that reads "Jamie Kim". The signature is written in dark ink and is positioned above the printed name.

Jamie Kim



## RESOLUTION 2005 - 037

### RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS ADOPTING GUIDELINES FOR MODIFICATION OF USE

This resolution establishes the criteria that will be used to evaluate a modification of use pursuant to Zoning Ordinance Section 29.20.200.

#### RESOLVED:

A conditional use permit (CUP) is intended to allow the establishment of those uses that have unique characteristics or special form such that their effect on the surrounding environment must be evaluated for a particular location. The CUP process allows for review of the location, design, configuration of improvements and potential impact on the surrounding area. Once a CUP has been granted it runs with the land. Modifications to a property with a valid CUP may be considered when an application has been filed for Architecture & Site approval or a building permit has been requested, providing there is no material adverse impact or substantial departure from the plans that were the basis for the CUP.

1. The following are examples of changes that would be considered a material adverse impact on the surrounding area:
  - a. Requirement for environmental review under the California Environmental Quality Act (CEQA)
  - b. Conflicts with General Plan goals and/or policies
  - c. An increase in outdoor noise levels that would exceed the limits set by the Town's Noise Ordinance
  - d. Non-compliance with the Commercial Design Guidelines
  - e. Changes to the operational aspects of the business that conflict with Planning Commission or Council conditions of approval (example, increasing hours of operation)
  - f. Inconsistency with <sup>any</sup> all applicable provisions of the Zoning Ordinance and the spirit and intent of the original approval
2. Examples of changes that are a substantial departure from plans that were the basis of the conditional use permit approval are those that result in any of the following:
  - a. Conflicts with operational conditions of approval
  - b. Adds land area to the property for which the use permit was granted
  - c. Results in a parking or traffic impact to other properties in the area
  - d. Conflicts with applicable provisions of the Town Code
  - e. Conflicts with General Plan Goals and/or Policies
  - f. Results in a change relative to service of alcoholic beverages

**PASSED AND ADOPTED** at a regular meeting of the Town Council held on the 18<sup>th</sup> day of April, 2005, by the following vote:

**COUNCIL MEMBERS:**

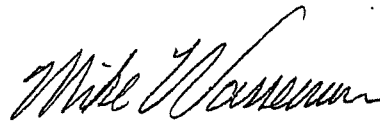
**AYES:** Steve Glickman, Diane McNutt, Joe Pirzynski, Barbara Spector  
Mayor Mike Wasserman

**NAYS:** None

**ABSENT:** None

**ABSTAIN:** None

**SIGNED:**



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**ATTEST:**



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

ORDINANCE 2143

ORDINANCE OF THE TOWN OF LOS GATOS AMENDING TOWN  
CODE SECTION 29.20.200 (CONDITIONAL USE MODIFICATION)

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

SECTION I

Town Code Chapter 29.20.200 shall be amended as follows:

Sec. 29.20.200. Conditional use modification.

A use authorized by conditional use permit shall not be modified unless a modification to the permit is approved. The following changes in use are modifications:

- (1) Intensification of use. Changes of use that will result in an increase of five (5) or more peak hour trips.
- (2) Commencement of new activities that could have a material adverse impact on the surrounding area.
- (3) Any change that is a substantial departure from plans which were the basis of the conditional use permit approval.

SECTION II

In the event that any part of this ordinance is held to be invalid, the invalid part or parts shall be severed from the remaining portions which shall remain in full force and effect.

SECTION III

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on April 18, 2005 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 April 18, 2005. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

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

NAYS: Barbara Spector

ABSENT: None

ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

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



May 7, 2007

Dear Town Council Members of Los Gatos,

My name is Jamie Kim, and I am representing my parents Se Bok and Sharon Park of TCBY. We are writing this letter in regards to the appeal case of the new yogurt shop, Café Delatti on 42 Elm St.

There are few points we would like to make in taking the position of opposition for approval of CUP for Café Delatti.

**1. Over saturation of "Ice Cream Shop" (referring ALL frozen sweets/ treats – Frozen yogurt, ice cream, gelato, smoothies, etc.) in Los Gatos downtown, especially around Santa Cruz avenue between Main street and Elm street.**

There are currently five businesses serving ice cream or frozen yogurt or gelato all only few doors away from each other. One thing we do NOT lack in downtown Los Gatos is ice cream shop. How many ice cream shops does one downtown need? On Castro Street in Mountain View downtown, there are two ice cream shops and they are located at the opposite end of the strip from each other (per visitation). In Palo Alto downtown, there are only two ice cream shops on the University Ave, and two more on crossing street around the University Ave. (per internet search). In Los Altos also, there are only two ice cream shops in central downtown area (per internet search). Not only as a business owner, but as a consumer who shops and dines at downtown Los Gatos, I would like to see more variety of retail stores and restaurants, not six different ice cream shops within half of a block.

**2. Over saturation of the same type of business does not promote healthy competition.**

Competition is good for the customers and also for businesses as it would motivate them to continue to make improvement in their service and the quality of their business. But it only works when it is balanced. Only when businesses are capable both financially and resourcefully of pursuing better their businesses without compromising the quality of product and service, it would benefit both customers and the community.

With Powell Candy shop open last July, our sales has dropped over 30%. Although we have managed to survive and keep afloat with a very small margin of profit without compromising the quality of our service and product to our customer and to the community, we are at very difficult situation as it is. But if another yogurt shop who serves almost identical menu (frozen yogurt, fruit toppings, and smoothies) opens, it will affect our business even more and we will most likely not be able to stay in this direct competition with even bigger loss in sales than now and it could also mean that we will be forced to close our door. Per Café Delatti's business plan and their presentation at the planning committee hearing, they claim that their product is unique and they offer different items, but in reality, for most of consumers it is just another frozen treat, and for many people and children, it is just another "ice cream". And the fact that not only that

their menu is identical to TCBY, but also in addition, they offer all kinds of coffee drink, espresso drink and tea, it can be in direct competition with the Great Bear Coffee as well.

**3. Asking the town council to protect the existing business by regulating over saturation of the same type of business.**

Although we understand that an individual or group holds the right to open any business of their choosing, we feel that saturating one area of downtown Los Gatos with another ice cream shop will cause ours and other stores selling frozen treats to suffer. With the high cost of rent, the franchise fee and daily operating expenses, the margin of profit for a store like TCBY is very low, especially as frozen yogurt and other frozen treat are very weather sensitive and seasonal items. Despite our struggle to stay in the business, we have been making improvement to the store to make it a more pleasing experience for each of our customers. We also have been actively participating in community events and making donations to local schools (St. Mary school, Los Gatos high school sports teams, etc.) and other local charity organization.

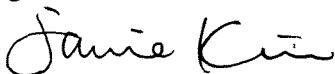
It is our desire for TCBY to continue to be a part of the history of this beautiful town as it has been for past 16 years, and to be established in downtown Los Gatos as a family friendly business for many years to come. We would like to continue to serve our customer with great product that is both delicious and healthy, and to contribute to the community by giving even more.

As we write this letter and prepare for the appeal hearing, our heart is burdened because we have to take the position of opposition to take to protect our business from the new business in direct competition. However, we feel that it is necessary not only for our benefit but for benefit of other existing businesses that can be affected negatively with opening of this new store, and further the benefit of the downtown of Los Gatos to have more balanced and diverse goods and service for its citizens. By no means, we are denying the right of the owner of Café Delatti to open a business in this beautiful town of Los Gatos, but it is the type of business they are trying to run which is already overly saturated in this particular area of downtown Los Gatos that we are opposing to.

So we are asking the Town Council to consider the matter of over saturation of ice cream shops (frozen treat business) in the downtown and the effect of yet another shop on existing business if opened, in decision making for this appeal case.

Thank you for allowing us to present our point of view in this matter.  
We appreciate your consideration.

Regards,



Jamie Kim,  
Se Bok & Sharon Park, the owner of TCBY.