



MEETING DATE: 06-04-2007

DESK ITEM:

4

COUNCIL AGENDA REPORT

DATE: JUNE 4, 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 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: MIKE COBLER: /APPLICANT/APPELLANT: SUH CHUNG KIM

Paragraph D. of the proposed resolution was modified to remove references to types of food products that are proposed to be sold in the high turnover/sit-down restaurant and paragraph G.i. was modified to state that the impacts of the CUP would be lessened by the elimination of alcohol sales, wine tasting and the reduced hours of operation.

Attachment: Proposed Resolution

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:LMB/wp [N:\ATY\Reports\Report 42 Elm Street.wpd]

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

Rev: 6/4/07 12:18 pm

Reformatted: 7/19/9

File# 301-05

RESOLUTION

RESOLUTION GRANTING AN APPEAL OF A PLANNING COMMISSION DECISION DENYING A REQUEST TO OPERATE A RESTAURANT ON PROPERTY ZONED C-2

APN: 529-03-035

PROPERTY LOCATION: 42 ELM STREET

PROPERTY OWNER: MICHAEL COBLER

APPLICANT/APPELLANT: SUH CHUNG KIM

WHEREAS:

A. This matter came before the Town Council for public hearing on May 21, 2007, and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the applicant/appellant 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 May 11, 2007, along with any and all subsequent reports and materials prepared concerning this application.

C. The appeal concerns a Planning Commission decision denying a request to operate a restaurant on property zoned C-2.

D. The application was considered and denied by the Planning Commission on April 11, 2007. The previous tenant at the project site (Café Rouge) received approval for a Conditional Use Permit on August 21, 2006 for a high turnover/sit-down restaurant. The Conditional Use Permit allowed for 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 sales limited between the hours of 11:00 AM to 11:00 PM, and outdoor seating. The applicant/appellant desires to modify this Conditional Use Permit to operate a high turnover/sit-down restaurant, while discontinuing all alcohol service, wine tasting, and retail alcohol sales and reducing the hours of operation to 10:00 AM to 9:00 PM. Although both the approved and proposed restaurants are

classified as high turnover/sit-down restaurants, the operation of the approved and proposed restaurants was determined to be substantially different. The Commission denied applicant/appellant's request to modify the Conditional Use Permit because it 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.

E. The applicant/appellant claims that the Planning 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.

F. The decision of the Planning Commission was incorrect and is hereby reversed.

G. Council finds as follows:

i. The request for a modified Conditional Use Permit on the applicant's business premises promotes policies and strategies of the General Plan including: 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 to meet the shopping needs of residents and to preserve the small-town atmosphere); L.P.5.2 (emphasize retail uses in the Commercial Business District); L.P.5.5 (encourage the development and retention of locally-owned stores and shops); L.G.6.2 (preserve downtown Los Gatos as the historic center of the Town with goods and services for local residents while maintaining the existing Town identity, environment and commercial viability). Council notes that the use, a high turnover/sit down restaurant, is essentially the same as that which was previously approved, but with a lesser impact resulting from the elimination of the permit to sell alcohol and conduct wine tasting and the reduced hours of operation.

ii. Pursuant to Town Code section 29.20.300(b)(3), the decision involved an

issue of policy over which the Planning Commission did not have discretion to modify or address, but which is vested in Council for modification or decision; to wit, whether it is appropriate under the policies and rules of the Town, including the General Plan and Zoning Code, to regulate the concentration of businesses within a common zoning use category, such as high turnover/sit down restaurant, by distinguishing their particular product, such as dessert. Council finds that it is not appropriate to do so.

RESOLVED:

1. The appeal of the decision of the Planning Commission on Conditional Use Permit application U-07-4 is granted and the application is approved, subject to the conditions attached as Exhibit "A" hereto.

2. 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 June 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