



MEETING DATE: 4/21/08

ITEM NO. 14

COUNCIL AGENDA REPORT

DATE: April 15, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

A handwritten signature in black ink, appearing to read "Greg Larson".

SUBJECT: CONSIDER A REQUEST FOR APPROVAL TO MODIFY AN EXISTING CONDITIONAL USE PERMIT TO EXPAND AN EXISTING QUALITY RESTAURANT (CAFÉ MARCELLA) WITH FULL LIQUOR SERVICE INTO THE ADJOINING TENNANT SPACE CURRENTLY OCCUPIED BY A RETAIL WINE SHOP ON PROPERTY ZONED C-2. PROPERTY LOCATION: **364-368 VILLAGE LANE**. FILE# U-08-003. PROPERTY OWNER: JOAN FRANCK, FRANCK FAMILY TRUST; APPLICANT: GLOBAL GRAPE L.P.

RECOMMENDATION:




1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Make the required findings (Attachment 1) and approve the modification to the Conditional Use Permit application U-08-003 subject to conditions (Attachment 2) (**motion required**).
4. Refer to the Town Attorney for the preparation of the appropriate resolution (**no motion required**).

BACKGROUND:

The requested modification to the Conditional Use Permit application involves 364 and 368 Village Lane, previously Café Marcella and Marcella's Market. On July 5, 1977, Town Council approved Conditional Use Permit Application U-77-12 for a restaurant at 368 Village Lane. On May 27, 1981, Planning Commission approved Conditional Use Permit Application U-81-9 to expand the floor area of the existing restaurant. The approval also allowed the restaurant to serve beer and wine with meals. Town Council approved full liquor service on December 19, 2005 (Exhibit 4 of Attachment 4).

(Continued to page 2)

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

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

Revised: 4/15/08 1:39 PM

Reformatted: 5/30/02

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: CUP MODIFICATION FOR 364-368 VILLAGE LANE; FILE # U-08-003

April 15, 2008

On August 10, 1995, Conditional Use Permit Application U-95-21 (Exhibit 5 of Attachment 4) was approved by Planning Commission for a retail beer and wine shop at 364 Village Lane.

On March 12, 2008, the Planning Commission considered the subject application and voted 5-1 to recommend approval of the proposed modifications to the existing CUP with conditions.

DISCUSSION

Project Summary:

The applicant is requesting approval to modify an existing Conditional Use Permit to allow an existing quality restaurant to expand into an adjoining retail space. The applicant is requesting to:

- Expand restaurant to include a 571 sq ft space currently known as Marcella Market at 364 Village Lane.
- Increase maximum number of seats from 96 to 105.
- Extend the operating hours to include all hours from 11:30 am to 11:00 pm Sunday thru Thursday and 11:30 am to 12 midnight Friday and Saturday.

Alcohol Policy:

The Town's Alcohol Policy requires any change in the service of alcoholic beverages to be approved by the Town Council. The Council reviews CUP requests for a change in alcohol service on a case-by-case basis to ensure that the request is appropriate for the specific restaurant and its location.

The Alcohol Policy requires specific findings to be made for service of alcohol past 10:00 pm, as follows:

6. *The deciding body shall make the following findings prior to approving an application for conditional use permit to serve alcoholic beverages past 10PM:*

- A. *Late night service will not adversely impact adjacent residential neighborhoods.*

While there are no immediately adjacent residential properties, the Town owned parking lot to the rear of the property does back up to 4 residential lots. Staff does not believe there will be a significant impact on those residences from this application.

- B. *The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.*

Neither the subject property nor the applicant have a history of complaints or non-compliance.

- C. *The applicant has demonstrated a clear benefit to the community.*

PAGE 3

MAYOR AND TOWN COUNCIL

SUBJECT: CUP MODIFICATION FOR 364-368 VILLAGE LANE; FILE # U-08-003

April 15, 2008

The applicant believes he demonstrates a community benefit by promoting green practices within his business model, and by offering a late night restaurant option within the downtown.

The applicant's existing CUP allows the restaurant to stay open until 10:00 pm. The above findings must be made to allow alcohol service beyond the hours of 10:00 pm as the applicant is requesting.

Parking and Traffic

BUSINESS	SQUARE FEET/SEATS/ STUDENTS/	PARKING STANDARD	PARKING SPACES
Café Marcella/Cin Cin Existing Proposed	96 Seats 105 Seats	1/4 seats 1/4 seats	24 26
Dog grooming tailoring Salon Framing (personal service/retail)	494 sq ft 357 sq ft 912 sq ft 609 sq ft Total: 2372 sq ft	1/300 sq ft	8.0
Design services Architecture (Office)	445 sq ft 200 sq ft Total: 645 sq ft	1/250 sq ft	3.0
Total Parking Required			37.0
Total Parking Provided			45 14 on site 31 in district

As shown in the chart above and discussed in detail in the Planning Commission staff report (Attachment 4) neither parking nor traffic will be significantly impacted by the proposed modifications.

PLANNING COMMISSION ACTION

The Planning Commission voted 5-1 to recommend approval of the request to modify the existing CUP to allow the restaurant expansion into the retail space, to expand the number of seats from 96 to 105, and to extend the operating hours. The new operating hours will be 11:30 am to 11:00 pm Sunday thru Thursday and 11:30 am to 12:00 midnight Friday and Saturday. The Commissioners had some reservations about the service of alcohol past 10:00 pm, but were able to make the findings that the applicant is demonstrating a community benefit. The Commissioners included the following conditions in the motion.

- Any significant modifications of the restaurant layout from the presented plan will require a modification of the CUP.
- A review of the CUP will be required one year from the date of approval to assess the community benefit of the extended operating hours.

PAGE 4

MAYOR AND TOWN COUNCIL

SUBJECT: CUP MODIFICATION FOR 364-368 VILLAGE LANE; FILE # U-08-003

April 15, 2008

Attachment 3 is a verbatim transcript of the Commission's discussion.

FISCAL IMPACT: None

CONCLUSION:

If the Council decides to approve the modifications to the CUP, it should make the required findings and considerations specified in Attachment 1, and approve the application, subject to the conditions in Attachment 2.

Attachments:

1. Required Findings & Considerations (one page)
2. Recommended Conditions of Approval (three pages)
3. March 12, 2008 verbatim Planning Commission Minutes (20 pages)
4. March 12, 2008 Report to the Planning Commission (five pages) with Exhibits 1-10

Distribution:

Joan Franck, 9 Glen Ridge Avenue, Los Gatos, CA 95030
Global Grape L.P., 364 Village Lane, Los Gatos CA 95030

BNL:MM

N:\DEV\CNCLRPTS\2008\VILLAGE LANE 364-368TC.RPT1.DOC

REQUIRED FINDINGS FOR

364-368 Village Lane

Conditional Use Permit U-08-003

Requesting approval to modify an existing Conditional Use Permit to expand an existing quality restaurant (Café Marcella) with full liquor into the adjoining space currently occupied by a retail wine shop on property zoned C-2. APN: 529-04-053

PROPERTY OWNER: The Franck Family Trust

APPLICANT: Global Grape L. P.

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

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

- (1) The proposed uses of the property are essential or desirable to the public convenience or welfare; and
- (2) The proposed uses will not impair the integrity and character of the zone; and
- (3) The proposed uses would not be detrimental to public health, safety or general welfare; and
- (4) The proposed uses of the property are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.

- As required by Chapter II Section 6 of the Town Alcohol Policy for granting alcohol service beyond the hours of 10 pm.

The deciding body shall make the following findings prior to approving an application for a Conditional Use Permit to serve alcoholic beverages past 10PM:

- A. Late night service will not adversely impact adjacent residential neighborhoods.
- B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.
- C. The applicant has demonstrated a clear benefit to the community.

- That the work proposed is consistent with the Redevelopment Plan for the Central Los Gatos Redevelopment Project Area (Section IV.B).
- As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorical Exempt.

N:\DEV\FINDINGS\364-368Village.wpd

REQUIRED FINDINGS & CONSIDERATIONS FOR:

590 Monterey Avenue

Architecture and Site Application S-08-002

Requesting approval to demolish a single family residence and to construct a new single story residence with a detached garage on property zoned R:1D. APN 410-15-069

PROPERTY OWNER/APPLICANT: Holiday Drive LLC

FINDINGS

Required finding for CEQA:

The project is Categorical Exempt pursuant to Section 15303 of the State Environmental Guidelines as adopted by the Town.

Required findings for demolition:

As required by Section 29.10.09030(e) of the Town Code for the demolition of a single family residence:

1. The Town's housing stock will be maintained in that the house will be replaced.
2. The structure has no historic significance.
3. The property owner has no desire to maintain the structure.
4. The economic utility of the structure is in fair condition.

CONSIDERATIONS

Section 29.20.150 - Required considerations in review of Architecture & Site applications:

The deciding body shall consider all relevant matter including, but not limited to, the following:

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

RECOMMENDED CONDITIONS OF APPROVAL FOR:

364-368 Village Lane
Conditional Use Permit U-08-003

Requesting approval to modify an existing Conditional Use Permit to expand an existing quality restaurant (Café Marcella) with full liquor into the adjoining space currently occupied by a retail wine shop on property zoned C-2. APN: 529-04-053

PROPERTY OWNER: The Franck Family Trust
APPLICANT: Global Grape L. P.

TO THE SATISFACTION OF THE PLANNING DIRECTOR:
(Planning Section)

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the approved plans (received February 19, 2008). 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.
2. **MODIFICATION OF BAR:** The existing bar shall be maintained as laid out on the approved plans (received on February 19, 2008); any expansion will require approval from the appropriate decision making body.
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. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 105.
5. **HOURS OF OPERATION:** Maximum hours of operation for the restaurant shall be 11:30 a.m. to 11:00 p.m. Sunday thru Thursday and 11:30 am to 12:00 midnight Friday and Saturday.
6. **ALCOHOL SERVICE:** The service of alcoholic beverages is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.
7. **EXISTING BAR:** The service of alcoholic beverages at the existing bar is permitted only with meals.
8. **LIVE ENTERTAINMENT:** Live entertainment is prohibited.
9. **TAKE OUT SERVICE:** There shall be no dedicated walk up counter.
10. **REVIEW:** One year from the approval date the Town Council shall conduct a review of the Conditional Use Permit. The applicant shall submit information demonstrating a clear community benefit as required by the Town's Alcohol Policy for alcohol service beyond the hours of 10 pm, and shall specifically include the following:
 - The applicant has received membership in The Bay Area Green Business Program, and
 - There has not been an adverse impact on the nearby residences.

April 7, 2008

TO THE SATISFACTION OF THE CHIEF OF POLICE:

11. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
12. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
13. TRAINING MANUAL: The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
14. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
15. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:

(Engineering Division)

16. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
17. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
18. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
19. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.

364-368 Village Lane / U-08-003

April 7, 2008

20. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

N:\DEV\CONDITNS\2008\364-368Village.doc

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

Los Gatos Planning
Commissioners: Michael Kane, Chair
John Bourgeois
Tom O'Donnell
Steve Rice
Marico Sayoc
Joanne Talesfore

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
(510) 337-1558

LOS GATOS PLANNING COMMISSION 3/12/2008
Item #3, 364-368 Village Lane

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

CHAIR KANE: We move on to new public hearings;
we have one. It is 364-368 Village Lane. The applicant is
Global Grape. The owners are Joan Franck and the Franck
Family Trust. It is requesting approval to modify an
existing conditional use permit to expand an existing
quality restaurant, Café Marcella, with full liquor service
into the adjoining space currently occupied by a retail
wine shop on property zoned C-2. It is APN 529-04-053. Mr.
Tsuda, do we have a Staff Report?

RANDY TSUDA: I just wanted to introduce you to
one of our assistant planners, Marni Moseley. This is her
first presentation before you. She's been with us about
four-and-a-half months.

MARNI MOSELEY: Six months.

RANDY TSUDA: Six months now. My, how times flies.
I just wanted to make that introduction, and she'll give you
your Staff Report.

CHAIR KANE: Thank you.

MARNI MOSELEY: Thank you, Mr. Chairman. This
conditional use permit application involves 364 and 368

LOS GATOS PLANNING COMMISSION 3/12/2008
Item #3, 364-368 Village Lane

1 Village Lane, previously Café Marcella and Marcella's
2 Market.

3 A conditional use permit for a restaurant at 368
4 Village Lane was granted in 1977 and was expanded to its
5 current size in 1981. Beer and wine service with meals was
6 also granted in 1981, and a full liquor service in 2005.
7 Three-six-four Village Lane held various retail shops until
8 1995 when Café Marcella applied for and was granted a
9 conditional use permit for the retail wine shop known as
10 Marcella's Market.

11 The applicant is requesting approval to modify the
12 existing high-quality restaurant conditional use permit. The
13 applicant is proposing to expand the restaurant into the 571
14 square foot adjacent retail space, expand the maximum number
15 of seats from 96 to 105, and to modify the hours of
16 operation.

17 The existing conditional use permit restricts
18 operation to the hours of 11:30am to 2:30pm, and then 5:30pm
19 to 10:00pm. The applicant would like to remain open from
20 11:30am to 11:00pm Sunday through Thursday, and 11:30am to
21 12:00 midnight Friday and Saturday.

22 The subject site is in the central business
23 district, which encourages pedestrian-oriented uses such as
24 retail, service, and entertainment. Due to concern about an
25 over-concentration of restaurants in the downtown, the Town
Council adopted Ordinance #2021 in 1996. The intent of this

1 ordinance was to discourage the displacement of retail uses
2 by restaurant uses and to require the Planning Commission to
3 conduct a careful review of all applications for new
4 restaurant uses in the C-2 zone.

5 Cin-Cin is replacing Café Marcella and is not
6 considered a new restaurant, however their request does
7 involve expansion into an adjacent tenant space that was
8 previously occupied by a retail use. The wine shop was owned
9 and operated by Café Marcella. The shop never operated as a
10 true retail, considering access to the shop was granted by
11 request only and only during the hours in which the
12 restaurant was open.

13 The subject site is also located on Village Lane
14 and is predominantly surrounded by personal service and
15 office uses, which do not actively draw pedestrians from
16 North Santa Cruz Avenue. As such, Staff does not believe the
17 expansion of the restaurant into the retail wine space will
18 adversely affect the pedestrian orientation of this
19 particular location in the C-2 zone.

20 The additional seats in the restaurant are the
21 equivalent to the retail space in parking and traffic impact
22 to the site, as such the conversion will not adversely
23 impact traffic or parking for the site.

24 The Town Alcohol Policy requires three additional
25 findings to be made when considering approval for
restaurants that serve alcohol beyond 10:00pm. The first two

1 deal with adversely affecting adjacent residential
2 properties and any history of alcohol-related complaints on
3 the subject site. Staff believes the application adequately
4 meets these qualifications.

5 The third requires the applicant to demonstrate a
6 clear benefit to the community, and Staff has not received
7 sufficient information to clearly demonstrate community
8 benefit on this application. As such, Staff recommends that
9 the Planning Commission recommend approval of the
10 conditional use permit to the Town Council with the
11 reduction in the operation hours to 10:00pm.

12 Alternatives that the Planning Commission may
13 consider are recommended all of the conditional use permit;
14 or recommend approval of the conditional use permit with
15 modifications to any of the following areas: expansion into
16 the adjacent space, expansion of the number of seats; or if
17 the Commission makes the findings that the applicant is
18 demonstrating a clear benefit to the community, expansion of
19 the operating hours may be granted as proposed or modified
20 as the Commission deems necessary.

21 This concludes Staff's report and we're here if
22 you have any questions.

23 CHAIR KANE: Thank you, Miss Moseley. I have a
24 question. We were discussing earlier how to pronounce the
25 successor establishment. I've hit on something, yes? Is it
"chin-chin" or "sin-sin?" Chin-chin.

1 MARNI MOSELEY: I apologize.

2 CHAIR KANE: No, I thought it was "sin-sin" until
3 I was corrected. What does it mean that you're allowed to
4 visit a wine shop only by request? Was it for wine tastings?

5 MARNI MOSELEY: In my understanding, and this is
6 just in speaking to people that have visited the site, and
7 the applicant himself who is familiar with the restaurant,
8 is that I don't believe they had the staff to continually
9 have it open, and so if somebody wanted to visit the wine
10 shop they had to go into the restaurant and ask for the
11 owner to open up the wine shop. That's just my understanding
12 of how it had operated. The applicant may be able to address
13 that issue more clearly.

14 CHAIR KANE: Thank you. Commissioner O'Donnell.

15 COMMISSIONER O'DONNELL: I just wanted to say from
16 personal experience that certainly that's true, and I think
17 my experience again was that sometimes people at the
18 restaurant would have a wine that they really liked that was
19 carried in the market, and they might say I would like to
20 get some bottles of that, or a case of that, or whatever,
21 and those two things, from my personal knowledge, work
22 together. But if you went down there at 2:00 o'clock in the
23 afternoon, the market would not be open. You could perhaps
24 walk in the restaurant and say I would like to get a case of
25 whatever, but you wouldn't know unless possibly you had
either gone to the restaurant or somehow had gone into that

1 market before. Near as I can it was selling wine that people
2 liked when they were in the restaurant having dinner.

3 CHAIR KANE: Thank you. Other questions of Staff?
4 Commissioner Rice.

5 COMMISSIONER RICE: Mr. Tsuda, the current CUP of
6 an 11:30 to 2:00 and then 5:30 to 10:00, how many
7 restaurants do we have downtown that have similar CUPs? Or
8 do we have any?

9 RANDY TSUDA: That's a good question. I can't give
10 you a firm number.

11 COMMISSIONER RICE: Can you remember us doing one
12 that way in the last five years? What I'm trying to get my
13 hands around is was that common then, is it common now, kind
14 of a thing.

15 RANDY TSUDA: No, that was simply the
16 incorporation of the hours as proposed by the applicants
17 originally.

18 COMMISSIONER RICE: So it wasn't magical from the
19 Town perspective?

20 RANDY TSUDA: No, it wasn't a Town mandate. This
21 was the hours that previous owners applied for and
22 requested, and the Commission and Council simply accepted
23 those hours.

24 COMMISSIONER RICE: Thank you.

25 CHAIR KANE: Other questions? Commissioner
Bourgeois.

1 COMMISSIONER BOURGEOIS: Thank you. I have a
2 question about seats. So the current CUP has 96 and they're
3 proposing to go up to 105.

4 MARNI MOSELEY: Yes.

5 COMMISSIONER BOURGEOIS: And yet the new area,
6 they're proposing 28 seats. So are they reducing the number
7 of seats in the current restaurant to make up for that?
8 Because if you add 96 to 28, you don't get 105.

9 MARNI MOSELEY: I didn't get into this in the
10 Staff Report, because it was a little confusing to try to
11 explain. The way that the applicant is looking to lay out
12 the restaurant is similar to how it is laid out currently,
13 and while they were granted 96 maximum numbers of seats,
14 they rarely ever used those. The layout didn't really
15 provide adequate space for that number of seats. So in
16 reality they're not using the maximum number of seats in the
17 main space that was granted, so it just flows differently.

18 CHAIR TALESFORE: And if I may follow-up, Mr.
19 Chair?

20 CHAIR KANE: Yes.

21 COMMISSIONER BOURGEOIS: I didn't go into their
22 layout and count chairs, but are they proposing to use the
23 full 105? Maybe I should ask the applicant that.

24 MARNI MOSELEY: In the layout that he has given
25 me, that is the way that he intends to orient the
restaurant. As you'll see on the floor plan, there is near

1 the bar area that separates the bar area from the main
2 seating area, there are...

3 COMMISSIONER RICE: Mr. Chair? I mean there's a
4 105 on the map that we're looking at, if that's what you're
5 asking?

6 COMMISSIONER BOURGEOIS: There are?

7 COMMISSIONER RICE: Yes.

8 COMMISSIONER BOURGEOIS: Okay, thank you.

9 MARNI MOSELEY: But there's... I'm trying to think
10 of the term.

11 COMMISSIONER BOURGEOIS: Like bench seating?

12 MARNI MOSELEY: Bench seating, yes. Thank you.
13 We'll probably not have six and five on each side, but that
14 was kind of where we placed those extra seats. It probably
15 will not seat that many.

16 CHAIR TALESFORE: Thank you. And then one more
17 question, if I may?

18 CHAIR KANE: Yes.

19 COMMISSIONER BOURGEOIS: They're proposing private
20 parties and wine classes. Is there going to be a retail
21 component to their business plan.

22 MARNI MOSELEY: Not in my understanding, but I
23 would recommend asking the applicant.

24 COMMISSIONER BOURGEOIS: Thank you.

25 CHAIR KANE: Other questions? Commissioner
Talesfore.

1 COMMISSIONER TALESFORE: Thank you. This is for
2 Staff, if I may. Mr. Tsuda, or I guess it would be Miss
3 Moseley, under the present conditions of approval, if there
4 are any modifications to the number of seats at the bar,
5 will that come back? I mean is that considered that it would
6 have to come back under another CUP, or can they ever
7 modify? Under this CUP can they modify the number of seats
8 at the bar? Because the bar was for a very specific reason
9 of either dining there or waiting there with wine while your
10 table is being prepared. So that's my question.

11 RANDY TSUDA: Under the current CUP it doesn't
12 have a specific restriction on the number of seats at the
13 bar, if that's what you're asking.

14 COMMISSIONER TALESFORE: So they could expand it?

15 CHAIR KANE: Well let me rephrase it. Are you
16 asking if they can increase the size of the bar? Because
17 they could squeeze more seats in.

18 COMMISSIONER TALESFORE: Expand the number of
19 seats at the bar.

20 CHAIR KANE: Yes.

21 RANDY TSUDA: The conditions as drafted don't
22 restrict it to the number shown on the plan, which is I
23 believe ten. If the Commission is concerned about the
24 applicant adding additional seats to the bar, you could add
25 that condition to the approval to specifically restricted to
no more than ten.

1 COMMISSIONER TALESFORE: Okay.

2 CHAIR KANE: Let me ask the question then, if this
3 CUP is approved could they then increase the size of the bar
4 from one wall around the side without an additional
5 application?

6 RANDY TSUDA: If they make substantial changes to
7 the layout on the approved exhibit, that would be a
8 modification to the CUP. However, if you impose that
9 restriction on the number of seats at the bar, as long as
10 they don't go over the number of seats, then that would not
11 be a modification.

12 CHAIR KANE: Other questions for Staff?
13 Commissioner O'Donnell.

14 COMMISSIONER O'DONNELL: This relates to that
15 question. I mean all of us, I supposed, at one time or
16 another have been in the restaurant. Unless you lengthen
17 that bar, it would be very difficult to add seats. You might
18 be able to get one more bench in, I don't know, but I mean
19 anybody that sat at that bar while they're waiting for
20 dinner reservations would be very unhappy if they put
21 another one in there, it's that tight. So when Commissioner
22 Kane says could they increase the bar, as far as I'm
23 concerned that's the only reasonable way they could increase
24 the number of seats, and I understand Mr. Tsuda said
25 essentially if you have a substantial modification to the
layout, then they would have to modify the CUP, and I for

1 one would consider a changing of the length of the bar to be
2 a substantial modification. If they disagree with me, they
3 should say so.

4 CHAIR KANE: And we can put that into our motion.
5 Other questions for Staff? Hearing none, I'm going to open
6 the public hearing, and I have no cards on this question.
7 Are there no speakers on this question? You trust us that
8 much. Do you wish to rebut to anything you've heard so far?

9 DON DURANTE (from audience): (Inaudible.)

10 CHAIR KANE: If you wish to speak, you need to
11 come up and talk to us.

12 COMMISSIONER TALESFORE: Thank you, and identify
13 yourself.

14 CHAIR KANE: Bring a blank card and fill it out
15 after you're done.

16 DON DURANTE: Thank you.

17 CHAIR KANE: Say your name and address.

18 DON DURANTE: Don Durante. I live at 20615 Wardell
19 Road in Saratoga.

20 CHAIR KANE: And you are the applicant?

21 DON DURANTE: Yes, both my partner and I, Miss
22 Lisa Rhorer, are limited partners, and I'm a general partner
23 of the limited partnership in Global Grape and DBA Cin-Cin.

24 CHAIR KANE: Thank you. You have five minutes.

25 DON DURANTE: Thank you. There are ten barstool
seats at the counter of Café Marcella existing right now,

1 and we don't have any intention to put any more. We have
2 ordered ten new bar stools, and we have no intention of
3 increasing the bar, making it longer, that is not our
4 intent.

5 Our intent is to take the wine shop retail, which
6 basically at this point in time is a non-existent retail
7 store, it's more of a storage area for the wines or if like
8 Commission O'Donnell said, if you wanted to have a bottle of
9 wine, after you headed into the restaurant you wanted to buy
10 some, then they had the ability to sell you a bottle to a
11 case or whatever. But our intention is not to be in the
12 retail wine business, off-premise sale. There's too much
13 competition out there in the market today with discount
stores and so forth.

14 We intend to be the restaurant business and we
15 need the additional seats within the new confines of the
16 retail store to make our concept work. So this is why we're
17 asking for the additional seats. Eventually there will be
18 Type 47 license to be moved into the 364 address, and
19 allowing us also to extend the hours of operation to 11:00
20 o'clock on weeknights, or Sunday through Thursday, and to
21 midnight on Friday and Saturday. I personally feel, and a
22 lot of other people who I've talked to feel, that if you're
23 going to the movie theater downtown or if you're coming back
24 from a party in the area and people maybe want to stop and
25

1 get a glass of wine or a cheese plate or something like
2 that, there's not really much open.

3 And it may not be to our benefit to be open that
4 long, but at least we want to make the attempt to go ahead
5 and be able to provide some food and beverage service till
6 11:00 Sunday through Thursday night. We know that the market
7 for midnight on Friday and Saturday is pretty much the same
8 for everybody else in town; everybody is busy on the
9 weekends. But we would like to extend the Sunday through
10 Thursday dining to 11:00pm at night.

11 So those are the three things we're looking for.
12 The adjacent space to take over for the restaurant. To
13 increase the hours, and to move the Type 47 liquor license
into the additional 571 square feet of off-premise retail.

14 CHAIR KANE: Thank you. Questions for Mr. Durante?
15 Commissioner O'Donnell.

16 COMMISSIONER O'DONNELL: Good evening, Mr.
17 Durante. I just want to ask you, the other restaurants in
18 town, I don't know that perhaps you did in deciding to get
19 into town in Los Gatos, are there a number of restaurants
20 during the week that are open serving food until 11:00pm?

21 DON DURANTE: I don't know per se if there's a lot
22 of restaurants open till 11:00. I know that there are quite
23 a few restaurants that aren't open till 11:00. I think what
24 our intention is is to offer that opportunity for late-night
25 dining, if that's what you want to call it, to be available

1 to people who are looking for something later at night. They
2 may want to come in at 10:00 o'clock and they may want to
3 hang out till 11:00 o'clock. Obviously we would give last
4 call for liquor or wine and spirits at 11:00. More than
5 likely you give last call 15-20 minutes ahead of time,
6 before your formal closing time. I've been in this business
7 a long time and have had several restaurants, and they've
8 been restaurants that always have abided by whatever the
9 town and cities have dictated to me, and so we're not
10 looking for anything out of the norm, but we're looking to
11 avail ourselves to be able to provide an additional service
12 at this time to create a dining experience for people who
13 want to come in.

14 COMMISSIONER O'DONNELL: I wasn't suggesting
15 anything. I'm just trying to get some background, because
16 the other thing I was curious about is if we assume that
17 some restaurants are open till 11:00 and some are not,
18 whatever, how about the 12:00? Do you know whether there are
19 any other restaurants in town that are serving food at
20 12:00? If you don't, that's fine. I'm just curious.

21 DON DURANTE: I don't know if they're serving food
22 until 12:00, but I know that there are restaurants that are
23 open till 12:00 on Friday and Saturday. Steamer's,
24 California Café, the higher volume restaurants, Los Gatos
25 Brewing Company.

1 COMMISSIONER O'DONNELL: At the moment you would
2 be to that extent at a disadvantage if you had to close
3 earlier than those other restaurants, for example, on a
4 weekend night.

5 DON DURANTE: The 12:00 o'clock closing is for
6 Friday and Saturday. The 11:00 closing is for Sunday through
7 Thursday.

8 COMMISSIONER O'DONNELL: Right, but you've now
9 told us that some restaurants for sure are open on the
10 weekends until midnight, and you're not. I'm mean you're not
11 being the old use permit.

12 DON DURANTE: The old use permit, no. We want to
13 be open till 12:00 midnight, sure. Yeah, there are
14 restaurants open now till 12:00 midnight. They may not be
15 serving food, but there are people in there, and they may be
16 having a beer or cocktail or whatever.

17 CHAIR KANE: Thank you, Mr. Durante, and thank
18 you, Commissioner. Are there other questions? Commissioner
19 Talesfore.

20 COMMISSIONER TALESFORE: The retail space that you
21 plan on turning into seating, would you just run us through
22 how you plan on using that? I see you have large tables in
23 there.

24 DON DURANTE: There is a communal table in there.

25 COMMISSIONER TALESFORE: That's what it is.

1 DON DURANTE: It's a two-part communal table; it
2 will seat up to 18. It can be divided in half and seat eight
3 on each one. There are also some tables for two along the
4 edge, along the perimeter of the wall. It's a very flexible
5 seating space. It certainly would generate a lot more volume
6 than the existing retail store that generates sales now.

7 COMMISSIONER TALESFORE: Are you planning on using
8 that as an area that you could, if you were a small company
9 or a large party, request that room?

10 DON DURANTE: As a private dining room? Yes, we
11 have the ability to close it off.

12 COMMISSIONER TALESFORE: What would you be using
13 to close it all with?

14 DON DURANTE: Drapery. Curtains.

15 COMMISSIONER TALESFORE: May I ask one more
16 question? My other question is on Exhibit #6, under CUP
17 Change, you talk about present market, it does about \$12,000
18 annual volume in sales, blah, blah, blah, but that space at
19 571 square feet can produce at least \$250,000 in food and
20 beverage revenue for our new concept. Are you meaning that
21 it includes being open the later hours? Is that how you
22 figured that out?

23 DON DURANTE: Definitely, yes. The space will be
24 contiguous with the existing space. It would all be open for
25 the same amount of time.

1 COMMISSIONER TALESFORE: All right, thank you. I
2 wanted to clarify that.

3 CHAIR KANE: Thank you. Any other questions? I
4 have one, Mr. Durante. You were describing a situation
5 earlier, it sounded like a couple walking home at night and
6 wanted to get a glass of wine and, you said, a cheese plate,
7 and all of my alarms and all of my radar went off, because a
8 cheese plate is not a meal. So you meant a T-bone steak on
9 their way home, didn't you?

10 DON DURANTE: Yes, we meant a T-bone steak with a
11 little cheese on the side.

12 CHAIR KANE: You understand the Alcohol Policy?

13 DON DURANTE: Yeah, I know.

14 CHAIR KANE: You can serve it when there's a meal.

15 DON DURANTE: Yeah. If you saw our cheese plate,
16 you would consider it a meal.

17 CHAIR KANE: It wouldn't be up to me. But it
18 wouldn't be a wine bar?

19 DON DURANTE: No. A late-night hangout for
20 cocktails? No, that's not our intention.

21 CHAIR KANE: Thank you. Any other questions? Thank
22 you very much. I'm going to close the public hearing and
23 turn to my commissioners for discussion and/or a motion.
24 Let's begin with Commissioner O'Donnell and go to his left.

25 COMMISSIONER O'DONNELL: I have a question of Miss
Moseley. Am I pronouncing it correctly?

1 MARNI MOSELEY: Yes, you are.

2 COMMISSIONER O'DONNELL: Staff does not believe
3 that we've met one prong of the test, and that was the
4 benefit. Would you explain that to me?

5 MARNI MOSELEY: I am new to this in understanding
6 what the Town or what Staff feels qualifies as community
7 benefit. I think that Mr. Tsuda would better answer that.

8 COMMISSIONER O'DONNELL: That would be fine.

9 RANDY TSUDA: As Miss Moseley has stated, the
10 policy does require demonstration that there is a benefit to
11 the community. This is a little different than the community
12 benefit policy that's referenced in the infill policy or a
13 traffic policy. It's not defined in the alcohol policy; it
14 just simply makes the statement that the Commission, and
15 ultimately Council, would need to make that finding. At this
16 point we haven't heard any evidence to demonstrate what that
community benefit is.

17 COMMISSIONER O'DONNELL: Just to follow-up on that
18 then, based on what you said, this Commission could, I take
19 it, determine that the public benefit might be, for example,
20 having later night dining in Los Gatos. Obviously for some
21 people, having later night dining is a benefit. On the other
22 hand, there are a lot of restaurants that close early for
23 obvious reasons. But we're not severely restricted on what
24 it takes to find a public benefit so long as we in good
25

1 faith believe it's a public benefit, is that you're
2 understanding?

3 RANDY TSUDA: That's right. There are no specifics
4 in the policy that guide you on that.

5 COMMISSIONER O'DONNELL: Thank you for the
6 question. Now my comments I would make is this.

7 I would like to see any restaurant that comes in
8 here to be successful as I think Marcella was. I think it is
9 clear that the market did not get much use, and they may
10 have wonderful reasons for it, but it didn't get much use,
11 and I think therefore the suggested use of it looks like a
very good use.

12 As far as the hours are concerned, I agree with
13 Commissioner Rice, it doesn't seem to make any sense at all
14 to require them to be closed in the afternoon, nor does the
15 Town seem to want that.

16 So the only question we really have is can they
17 stay open later during the week, and can they stay open even
18 later on the weekend? As I understand it there is no
19 opposition from the police department or anything else as
20 far as that is concerned. I personally, just from my
21 experience of living in this town for the last 35 years or
22 whatever it's been, would find it helpful to the Town to
23 have some later night dining, and I for one could in good
24 conscience find that to be a public benefit.

25 So those are my comments.

1 CHAIR KANE: Thank you. Commissioner Bourgeois.

2 COMMISSIONER BOURGEOIS: I do agree that the
3 change in use makes sense. We're always reluctant to give up
4 retail space, but in this location and in this case I think
5 it does make sense. I'm assuming the Staff's comment on
6 recommending 10:00pm is based on the alcohol policy that
7 says 10:00pm, but it's discretionary on a case-by-case basis
8 to go beyond that. Do we need to make any findings?

9 RANDY TSUDA: You would need to make the finding
10 that they've demonstrated a benefit to the community.

11 COMMISSIONER BOURGEOIS: To go beyond 10:00pm?

12 RANDY TSUDA: That's correct.

13 COMMISSIONER BOURGEOIS: Got it. And that's the
14 one I'm struggling with. So I'm on the fence on being able
15 to make that finding, whether or not staying open later in
16 and of itself constitutes community benefit. I'm struggling
17 with it, so I'd love to hear the thoughts of my fellow
18 commissioners.

19 CHAIR KANE: Thank you. Commissioner Talesfore.

20 COMMISSIONER TALESFORE: Thank you. I did consider
21 the loss of the retail space, but I took a stroll down the
22 lane today, and the retail that is there is basically very
23 specific. It's not a place that you would stroll down to
24 wander in and buy something. The kind of pedestrians it does
25 attract are very specific for a reason to be there, and
including the restaurant. So I think at this point it's not

1 prime retail as far as what we consider North Santa Cruz to
2 be. It's a much more service-oriented store, so I don't
3 really have a problem with perhaps losing that space,
4 although I do think it's a shame and I'm sorry it didn't
5 work out differently, perhaps it wasn't marketed well, and
6 maybe some of us will miss the wine store.

7 But anyway, I think that the draw is for
8 restaurants in this area, so I think that the expansion will
9 work. But what I am concerned about are the hours, because
10 as Commissioner Bourgeois stated, it's hard to find a
11 benefit. You've just moved to town. I can't find one for
12 you. Maybe perhaps if you come back to us in six months or
13 nine months or something like that, but I think that for me
14 right now, I can't find one to allow you to stay open later,
15 and I would go with Staff's recommendation on that.

16 That's all I have to say now.

17 CHAIR KANE: Thank you. Commissioner Sayoc.

18 COMMISSIONER SAYOC: I want to say that I'm very
19 excited about the applicant's proposal. I've been to your
20 other restaurant in Mountain View and I'd like to go to a
21 restaurant much closer to town that you own, so I welcome
22 your addition.

23 The two issues: expansion into adjacent retail
24 space, initially I was not in favor of that, primarily
25 because of the ordinance that really discourages
displacement of retail. But as my fellow commissioners have

1 said, that area, it doesn't draw the window shopping as your
2 justification letter states, and so on that note, we
3 scrutinized it and I think it's adequate reason why we can
4 allow expansion into that area.

5 I'm going to have to agree with the Staff
6 recommendation of limiting it to 10:00pm. I do agree that
7 keeping it all day, that's not a problem, but at this point,
8 because you are a new restaurant, even though you do have a
9 history in other cities, but a new restaurant in our town, I
10 do think that limiting it to 10:00 for now is my own
11 preference, but that's not to say that in the future when
12 you've attached roots into the community, that you can't
13 come back and demonstrate to us a benefit.

14 CHAIR KANE: Thank you, Commissioner. Commissioner
15 Rice.

16 COMMISSIONER RICE: I don't want to beat too many
17 dead horses, but I agree that the retail replacement is a
18 non-issue, because that's not what I would view as prime
19 retail location that's being replaced there.

20 With regard to the benefit, I'm going to carry on
21 what Commissioner O'Donnell was saying, and I'm almost
22 thinking that the benefit might be later operating hours
23 where it has the least impact on surrounding residences,
24 because there aren't any there. This is one of the few
25 restaurants in our downtown that doesn't back up to or
adjoin residences, and that in and of itself might be enough

1 of a benefit to sway me to say I'm willing to give them the
2 extra hour doing the week and two hours on the weekend. I'm
3 not sure from what I've heard that's probably going to get
4 much support on that, but I like the merits of the
5 application in general and I just wanted to throw that out
6 for anybody else to think about that the location is unique
7 in that there are no residences around that would be
8 adversely impacted, and I think that a big piece of the
9 motivation behind the hours that are limited in our alcohol
10 policy are to minimize the impact on the residents, and I
11 don't think that's an issue here, and I think that could be
12 a benefit.

13 CHAIR KANE: Thank you, Commissioner. I think I'll
14 have maybe one new thing to say as regards the loss of
15 retail. Whereas it may seem to be minimis in this special
16 circumstance, we must always remember we may never get it
17 back. So we take a bite here, we take a bite there, and then
18 we have a mouthful.

19 However, in this case it does seem to be de
20 minimis. This space wasn't getting used; it will not
21 adversely impact the Town. I would support a motion that was
22 in favor of the expansion.

23 The alcohol policy is one of our important
24 documents. It was put in there for a reason. It's to hold
25 the bridge, to maintain the Town character, et cetera. I'll
just briefly say that holding the new owner to the existing

1 terms and conditions is probably what I'm in favor of, but
2 as I did hear from one commissioner, and I would suggest we
3 open as is for a while, until a clear benefit is in fact
4 demonstrated, which is what the language says. It requires
5 an additional finding that the applicant has demonstrated a
6 clear benefit to the community. This applicant has not done
7 that yet, because this applicant is brand new and doesn't
8 even exist yet. But I would think after a time of service in
9 the Town, that desire to change hours could be reconsidered.

10 Anything else I wanted to say has already been
11 said. May I have a motion on this question?

12 COMMISSIONER O'DONNELL: I'd like to make another
13 comment.

14 CHAIR KANE: You could do that even if we had a
15 motion, but go ahead.

16 COMMISSIONER O'DONNELL: It seems to me we have
17 agreement on a major point here, from what I've heard. The
18 only question we have, and it sounds like Commissioner Rice
19 and I are very much in the minority, but I would just
20 suggest this to you. Number one, when it says "has
21 demonstrated," it doesn't mean by having been open, because
22 that would make little sense, because you're here to say may
23 we open, and yet they use the language past tense, "has
24 demonstrated." That simply means have you made a showing, I
25 believe. There's no question that this applicant hasn't bent
over backwards to make a showing. That I think does not

1 prevent us from simply looking however at the facts before
2 us.

3 Commissioner Rice has correctly pointed out the
4 unique location of this restaurant. I would also call to
5 your attention the benefit of having a restaurant serving
6 liquor until 11:00 and 12:00 at night, as opposed to having
7 only bars serving that. To me it is a public benefit to have
8 people who would just as soon would not be a bar be able to
9 go get a meal and have a glass of wine or a drink. If that
10 isn't a benefit over saying if you want to get a drink in
11 Los Gatos you sure as heck better go to a bar. That doesn't
12 sound like a good policy for the Town, and therefore to me
13 the more we can encourage people to go out and have a meal
14 when they're going to have a drink, the better the public
benefit is, so for whatever it's worth.

15 I would also say the idea of saying open for a
16 while so that you can then demonstrate to us, I again have
17 to question how do they demonstrate to us that if we had let
18 them be open later it would have worked out fine, but
19 because we haven't let them open, now they demonstrated to
20 us that we should have. To me it seems like a non sequitur.
21 So I would invite my fellow commissioners to revisit their
22 thoughts. I realize I'm not going to be convincing here, but
23 I thought I at least would try, because I happen to believe
24 that it would be good for the Town.
25

1 CHAIR KANE: Thank you, Commissioner. I may have
2 been negligent in making an important point here, that
3 because this CUP expansion deals with the alcohol policy
4 that the best we can do is to make a recommendation one way
5 or the other to Town Council, and in all due respect to
6 Commissioner O'Donnell, this Chair would like to steer clear
7 of making policy. So I look for more discussion and/or a
8 motion. Commissioner Bourgeois.

9 COMMISSIONER BOURGEOIS: After listening to my
10 fellow commissioners and giving it some more thought myself,
11 kind of going through their entire proposal, the one thing
12 that jumps out at me as potential benefit is their pledge to
13 be a green business, taking steps that are above and beyond
14 what are necessary to implement their business plan. Using
15 local produce and sustainable materials to me constitutes a
16 benefit, and upon thinking about that a little further, I
17 think I could make that that is a clear benefit. We have new
18 initiatives in town to promote this sort of thing, and I
19 think coming out front and taking a leadership position by
20 proposing this from the get-go, I would strongly encourage
21 them to seek certification as a green business, I personally
22 could find that as a demonstrated benefit to the community.

23 CHAIR KANE: Thank you. Other commissioners?
24 Commissioner Rice.

25 COMMISSIONER RICE: Just a quick question of
Staff. Is it possible to have the CUP approved one way with

1 a review down the road? What I'm trying to avoid is having
2 to have them come back six months or a year from now and say
3 okay, here's our benefit, which I agree with Commissioner
4 O'Donnell, I'm not sure makes any sense. I'm inclined to
5 trust that this is going to work because of the location and
6 the type of restaurant that's proposed and that type of
7 thing, but I'm not adverse to it being reviewed six months
8 down the road to make sure that it isn't causing a problem.

9 COMMISSIONER TALESFORE: Right. Good.

10 CHAIR KANE: Commissioner Talesfore, did you want
11 to continue that comment?

12 COMMISSIONER TALESFORE: Excuse me. I would just
13 like to comment that I like where you're going with that,
14 Commissioner Rice. And Commissioner Bourgeois, yes this is
15 wonderful that they're doing green, but then we do have
16 other businesses in town that are also green, which is the
17 pharmacy as well. I'm just not sure how being green speaks
18 supports extended hours in this case. So that's where I am
19 with that.

20 I mean I think the green building is going to
21 become more the expectation in town, so I can't go along
22 with that kind of thinking. And I would like to ask a
23 question of Staff, if I may?

24 CHAIR KANE: Let me interrupt at this point,
25 Commissioner.

COMMISSIONER TALESFORE: Yes.

1 CHAIR KANE: I want to see some clarification from
2 Mr. Korb on the question.

3 ORRY KORB: The question asked by Commissioner
4 Rice?

5 CHAIR KANE: Yes.

6 COMMISSIONER RICE: Thank you.

7 COMMISSIONER TALESFORE: And can I tab one onto
8 that? This is go a lot quicker.

9 CHAIR KANE: Why don't we get his answer first,
10 and then you can tag right on top of that.

11 ORRY KORB: The short answer is, yes, you can add
12 a review period as a condition, but I should warn the
13 Commission that we don't leave the application open during
14 that period of time. The review period merely educates the
15 Commission and Staff regarding any subsequent problems that
16 may have arisen. Then it's up to the Commission to decide
17 whether to reopen a use permit because of any violations.
18 But you have done review periods and you can do so again
19 here.

20 COMMISSIONER RICE: Thank you.

21 CHAIR KANE: Thank you. Commissioner Talesfore.

22 COMMISSIONER TALESFORE: Mr. Korb answered my
23 question that we have done this before, so this is not a new
24 way to do business. Thank you.

25 CHAIR KANE: We're moving toward a motion.

COMMISSIONER O'DONNELL: I'll make a motion.

1 CHAIR KANE: Commissioner O'Donnell.

2 COMMISSIONER O'DONNELL: I would move that we
3 recommend approval.

4 First, in the recommendation I would make the
5 finding that the project is categorically exempt pursuant to
6 Section 15301 of the State Environmental Guidelines.

7 As far as approving the conditional use permit
8 under the Town Code, I would find that it is a public
9 benefit to the Town to have the longer hours for the reasons
10 we've previously stated, and those were three or four as I
11 recall.

12 One was the unique location. Secondly was the idea
13 of having people have a place to go for food and drink as
14 opposed to only drink after 10:00 o'clock. And third was as
15 an incentive for people who are on their own offering to do
16 something environmentally very conscious and good, and
17 that's the green work that they are going to do.

18 So for those reasons I would recommend that we can
19 make that finding. And that also goes to the determination
20 that the proposed modifications would be in compliance with
21 the Town's alcohol policy.

22 Also I would just make it clear that in going to
23 10:00 or 11:00, I'm also suggesting that specifically we
24 allow them to be open without getting shut down in the those
25 afternoon hours that we've talked about. So that's the
motion.

1 CHAIR KANE: Is there a second?

2 COMMISSIONER BOURGEOIS: Second.

3 CHAIR KANE: Discussion? I have discussion. Well
4 my discussion is I support four out of five aspects of the
5 motion. I will not the support the motion because of the
6 fifth aspect, which is disagree with Staff's recommendation
7 in this regard that the hours be maintained at 10:00pm as
8 they are right now, that we give some validity to the
9 concept of demonstrating benefit, not that we presume
10 there's benefit, and also that we stay away from the area of
11 making policy. So for those reasons I won't be supporting
12 the motion.

13 Other discussion? Hearing none, I'm going to call
14 the motion. All those in favor? And opposed?

15 CHAIR KANE: It's 3-3. The motion as stated fails.
16 Do I have a revised motion? Commissioner Talesfore.

17 COMMISSIONER TALESFORE: I don't want to make it,
18 but I would support this if we could put in there that we
19 review this, or however that has to come back.

20 CHAIR KANE: Well may I suggest that we take the
21 motion that we have?

22 COMMISSIONER TALESFORE: This is just a
23 recommendation.

24 CHAIR KANE: Put the 10:00 o'clock on it.

25 COMMISSIONER TALESFORE: Yes.

1 CHAIR KANE: And give it a what, six-month review?
2 Nine-month review?

3 COMMISSIONER TALESFORE: However, that's not what
4 happened, as explained by Staff, but however it would
5 happen. This is only a recommendation.

6 CHAIR KANE: Can you help us out, Mr. Tsuda?

7 RANDY TSUDA: If you're going to do the review,
8 then you would want to adopt the longer hours and conduct a
9 review, say, in a year, to determine if there's any issues
10 associated with the longer hours.

11 CHAIR KANE: I would think that would be adverse
12 to the maintenance of the language, which at least is my
13 point, to do it that way as opposed to the other way.

14 RANDY TSUDA: I'm getting to Commissioner
15 Talesfore's question regarding the option of requiring a
16 review period. It doesn't make sense then to really have the
17 review period if you're adopting the lesser hours that are
18 already consistent with the alcohol policy. You would
19 conduct a review if you were granting them the longer hours.

20 CHAIR KANE: So if we went to the 10:00 o'clock,
21 drop the review period, is what you're suggesting? Is there
22 a motion to that effect?

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

24 CHAIR KANE: Just let me see if there's a motion
25 to that effect or if there's any support to it. If there
isn't, I'll drop it. All right, Commissioner O'Donnell.

1 COMMISSIONER O'DONNELL: Just so we can be clear
2 on the record, since there's been some suggestion that we
3 would not be following the Staff's recommendation were we to
4 extend the hours, if I understand the Staff's
5 recommendation, it is one of the lighter recommendations
6 I've listened to in a long time, and that is the Staff seems
7 to suggest to us that the finding of benefit is fairly open
8 here; it's not a narrowly defined benefit. Perhaps I'm
9 misreading Staff, but I don't find Staff's statement about
10 not meeting the benefit to be a strong statement. Am I
11 misreading that?

12 RANDY TSUDA: When we wrote the Staff Report, we
13 did not identify evidence that would lead us to conclude
14 that there is a demonstration of community benefit. So in
15 the absence of that, we recommended that the hours be
16 restricted to 10:00. Now, the Commissioners, based on what
17 you've heard tonight, are free to reach their own
18 conclusions regarding benefit, but when we wrote the report
19 we did not see that demonstration.

20 COMMISSIONER O'DONNELL: Thank you.

21 CHAIR KANE: Do I have discussion on a motion?
22 Commissioner Talesfore.

23 COMMISSIONER TALESFORE: I guess a discussion
24 point, or I could refer this back to Staff. With all the
25 other restaurants, Mr. Tsuda, that come before us, haven't

1 they been recommended because they've demonstrated community
2 benefit? Haven't we held them to that bar?

3 RANDY TSUDA: Most of the restaurants that have
4 the later hours actually pre-date the alcohol policy.

5 CHAIR KANE: Do you understand that? Thank you.
6 Commissioner Rice.

7 COMMISSIONER RICE: Because I don't want to steal
8 Commissioner O'Donnell's thunder, might I suggest that you
9 reintroduce the same motion but with the one-year review
10 period for the later hours? Maybe that will buy us the
11 ability to move this on.

12 COMMISSIONER O'DONNELL: Well I can try that. I
13 didn't hear any groundswell of support for that, but let me
14 try it again. The same motion, however, that the granting of
15 the conditional use permit would be suggest to a review in
16 one year to make sure that the performance of the
17 conditional use permit was not being adverse to the public
18 by being in violation of any of the conditions, or of the
19 use permit itself. So the same motion, with that
20 modification.

21 CHAIR KANE: Thank you. Do I have a second?

22 COMMISSIONER BOURGEOIS: I'll second that one.

23 CHAIR KANE: Commissioner Bourgeois provides a
24 second. Discussion?

25 COMMISSIONER RICE: I'll make one comment on it,
that I think it accomplishes the checks and balances that we

1 want to put into this without forcing the applicant to come
2 back to us and pay another fee for a modification of the use
3 permit. I think what we want to do here is support
4 businesses that want to do business in town. It's not a
5 money issue per se, but it's a process issue. I'd rather
6 trust that they're going to do it right, and if they don't,
7 we have that ability to review it and reopen it.

8 CHAIR KANE: I understand what you're saying.
9 Other discussion?

10 COMMISSIONER TALESFORE: This is hard, but I
11 probably would go with this, because this is a
12 recommendation to Council. So if that's in there, that's
13 fine. And also can we consider the modification about the
14 bar being extended or something? Can we put that in there?
15 Mr. Tsuda, would you please? You remember what I was talking
16 about.

17 COMMISSIONER O'DONNELL: Let me just add.

18 COMMISSIONER TALESFORE: Yes.

19 COMMISSIONER O'DONNELL: See if this satisfies
20 you. We would add to the motion that the plan as submitted
21 would be substantially followed, and specifically that the
22 bar itself would not be elongated or made bigger. I guess
23 elongated is the right word; we don't care how wide it is.
24 So it will not be elongated.

25 COMMISSIONER TALESFORE: Lengthened.

COMMISSIONER O'DONNELL: Lengthened.

1 CHAIR KANE: Thank you.

2 COMMISSIONER BOURGEOIS: And the seconder agrees.

3 CHAIR KANE: All right, discussion. Commissioner
4 Sayoc.

5 COMMISSIONER SAYOC: I also have one request then
6 for the maker of the motion and the seconder. Going to
7 process, if when the one-year review takes place, if it can
8 just clearly list out and demonstrate the benefits that
9 they've done within that year, then I will be willing to
10 support it.

11 COMMISSIONER O'DONNELL: Can I ask a question of
12 the requester?

13 CHAIR KANE: If it helps.

14 COMMISSIONER O'DONNELL: Well otherwise I can't
15 support it, because I don't understand it. I want to know
16 what they'd have to show. In other words, three or four of
17 us have said we think these are the benefits that could
18 flow, and everybody isn't coming up with the same benefit.
19 So in one year we know that it's either going to do the
20 green things, et cetera, and so that's an easy one.

21 COMMISSIONER SAYOC: Right, that's one
22 demonstration.

23 COMMISSIONER O'DONNELL: I've said it's better to
24 get people to go to restaurants than to go to bars. Well,
25 how do you prove that? Do we count people going into the
bars before they open and then count the people...

1 CHAIR KANE: Commissioner O'Donnell, does that
2 mean you're not in favor of the that?
3 COMMISSIONER O'DONNELL: I'm trying to understand
4 it, and I want to make sure that...
5 CHAIR KANE: I'm not sure that she needs to answer
6 that. I mean the one-year needs to show clear benefit.
7 COMMISSIONER O'DONNELL: Well, if I could finish
8 it, then she could let me know whether she...
9 CHAIR KANE: I don't want to debate back and
10 forth.
11 COMMISSIONER O'DONNELL: You don't have to. Let me
12 finish my comment to her, that's all. You...
13 CHAIR KANE: Excuse me.
14 COMMISSIONER O'DONNELL: Yeah.
15 CHAIR KANE: I don't think we have to take it.
16 What she's saying is in one year they need to demonstrate
17 clear benefit. I don't want to spell out what that means to
18 be right now; I don't think we can. (Inaudible) a
19 recommendation.
20 COMMISSIONER O'DONNELL: Then I won't support the
21 motion. It makes it fairly simple. I won't do it. If you'd
22 like to explain something, I might consider it, but since
23 the Chair won't let me find out, I can't support it.
24 COMMISSIONER SAYOC: If I may, through the Chair?
25 CHAIR KANE: Yes, ma'am.

1 COMMISSIONER SAYOC: I think the language is
2 pretty clear to me. They have to demonstrate the applicant
3 has demonstrated a clear benefit to the community, and it's
4 okay for us to present findings which we believe for it, but
5 for me it states here that the applicant has to demonstrate.
6 I think LEED certification is pretty clear. Either
7 you've demonstrated that you're moving in that direction or
8 you're not.
9 In terms of proximity to residential zone, that
10 could also be a clear demonstration. Are you getting
11 complaints from the police from neighboring residents?
12 I think with all of these findings, in some way or
13 another, within a year's time we have to be able to say were
14 these correct findings or not? And the applicant, I think
15 they can easily see the findings that were in their
16 conditions of approval and come back to us and say, "We
17 believe we've demonstrated those." And so I think that's a
18 responsibility that this alcohol policy has put on the
19 applicant, and I'd like to follow through on that and have
20 them take that responsibility, and I don't see that there's
21 any further harm in asking them to do so.
22 CHAIR KANE: Is that acceptable to the maker of
23 the motion.
24 COMMISSIONER O'DONNELL: It is.
25 CHAIR KANE: And the seconder?
COMMISSIONER BOURGEOIS: Yes.

1 CHAIR KANE: Other discussion? Do we understand
2 the motion? Yes. I'll call the question. All those in favor,
3 say aye. All those opposed, nay. Motion carries 4-1. Do we
4 have appeal rights?

5 COMMISSIONER O'DONNELL: Did somebody not vote?

6 CHAIR KANE: Motion carries 5-1. I saw four of
7 you. Motion carries 5-1. Appeal rights?

8 ORRY KORB: There are no appeal rights. The
9 Commission's decision is a recommendation to the Town
10 Council. A hearing will be scheduled before the Town Council
11 on the application. Notice will be provided.

12
13
14
15
16
17
18
19
20
21
22
23
24
25