



MEETING DATE: 10/6/08  
ITEM NO. 7

## COUNCIL AGENDA REPORT

DATE: September 26, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

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SUBJECT: CONSIDER A REQUEST FOR APPROVAL TO MODIFY AN EXISTING CONDITIONAL USE PERMIT TO ALLOW FULL LIQUOR SERVICE WITH MODIFIED HOURS OF OPERATION. PROPERTY LOCATION: **330 NORTH SANTA CRUZ AVENUE**. FILE# U-08-010. PROPERTY OWNER: MELDIMAR LLC; APPLICANT: M.S.D. RESTAURANT CO. LLC.

### 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-08-010 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 subject site is located on the east side of North Santa Cruz Avenue approximately 100 ft north of Petticoat Lane, and directly across from Almendra Avenue. The space was previously occupied by Transylvania restaurant. The current Conditional Use Permit (CUP) was approved by Town Council on September 2, 2003. The Use Permit established operating hours from 10:00 AM until 10:00 PM daily. It also allowed alcohol service (beer and wine) in the small outdoor patio area at the front of the restaurant.

On September 10, 2008, the Planning Commission considered the subject application and voted 3-2 to recommend approval of the proposed modifications to the existing CUP with conditions.

Continued on Page 2

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

Reviewed by: BSJ Assistant Town Manager dl Town Attorney      Clerk      Finance  
     Community Development

Revised: 9/26/08 1:11 PM



DISCUSSION

Project Summary:

The applicant is requesting approval to modify the existing CUP to allow full liquor service. The applicant is also requesting to extend the hours of operation to 11:00 PM Sunday thru Thursday and until 1:00 AM on 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, Staff has received a letter of opposition to the additional hours from the residents along Almendra Avenue (Attachment 5 Exhibit 10).

- 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 has a history of complaints or non-compliance.

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

The applicant believes he demonstrates a community benefit 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. Several restaurants in the immediate vicinity are currently permitted to serve alcohol beyond 10:00 PM (Attachment 6).





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MAYOR AND TOWN COUNCIL

SUBJECT: CUP MODIFICATION FOR 330 NO. SANTA CRUZ AVE, FILE # U-08-010

*September 26, 2008*

PLANNING COMMISSION ACTION

The Planning Commission voted 3-2 to recommend approval of the request with a modification to the hours requested by the applicant. 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, and that current neighborhood conditions will not be negatively effected by the modifications. The Commissioners included or modified the following conditions in the motion:

- Hours of operation shall be limited to: 10 AM to 11 PM Sunday thru Thursday and 10 AM to 12 AM Friday and Saturday, with alcohol service ending one hour before closing.
- The kitchen shall remain open until the restaurant closes.
- The applicant shall meet with neighbors at least twice a year for the first year of operation, and as necessary thereafter. Findings shall be presented to the Planning Commission as appropriate.
- Outdoor speaker usage shall be limited to the hours before 9 PM daily.

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 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 (two pages)
3. September 10, 2008 verbatim Planning Commission Minutes
4. August 27, 2008 Report to the Planning Commission
5. September 10, 2008 Report to the Planning Commission
6. Restaurant closing hours chart (one page)

Distribution:

M.S.D. Restaurant Co. LLC, 330 North Santa Cruz Avenue, Los Gatos, CA 95030  
Meldimar LLC, 1401 Martin Ave, Santa Clara, Ca 95050

BNL:MM







## **REQUIRED FINDINGS FOR**

**330 North Santa Cruz Avenue**  
**Conditional Use Permit U-08-010**

**Requesting approval to modify a conditional use permit to allow full liquor service with modified hours of operation on a property zoned C-2. APN: 529-04-053**

**PROPERTY OWNER: Meldimar LLC**

**APPLICANT: M.S.D. Restaurant Co. LLC**

- 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 Categorically Exempt.

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**RECOMMENDED CONDITIONS OF APPROVAL FOR:**

**330 North Santa Cruz Avenue**  
**Conditional Use Permit U-08-010**

**Requesting approval to modify a conditional use permit to allow full liquor service with modified hours of operation on a property zoned C-2. APN: 529-04-053**

**PROPERTY OWNER: Meldimar LLC**  
**APPLICANT: M.S.D. Restaurant Co. LLC**

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

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as received by the Town on June 23, 2008. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. **EXPIRATION OF APPROVAL:** The Conditional Use Permit will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. **HOURS OF OPERATION: Hours of operation shall not exceed 10:00 am to 11:00 pm Sunday thru Thursday and 10:00 am to 12:00 am Friday and Saturday.**
4. **SEATING.** A maximum of thirty two (32) seats are allowed inclusive of indoor and outdoor dining areas. A maximum of eight seats may be placed in the outdoor dining area.
5. **OUTDOOR DINING AREA.** The outdoor dining area shall be maintained and kept litter free.
6. **OUTDOOR DINING BARRIER.** The barrier around the outdoor dining area shall remain, to provide clear delineation of the eating area, and to provide adequate separation from the adjacent public areas. The final design of the barrier shall be approved by the Director of Community Development, Consulting Architect and the Police Chief, prior to issuance of any building permits.
7. **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. **Alcohol service shall end one hour before closing.**
8. **KITCHEN HOURS:** The kitchen shall remain open until the restaurant closes.
9. **OUTDOOR SPEAKERS:** The use of the outdoor speakers shall be limited to the hours before 9:00 pm daily.





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. LIVE ENTERTAINMENT. No live entertainment shall be provided unless the applicant receives future approval of live entertainment.
13. **NEIGHBORHOOD MEETINGS: The applicant shall meet with the neighbors at least twice a year for the first year, and as necessary thereafter to address any concerns that may arise.**
14. **ONE YEAR REVIEW. Town staff shall review the Conditional Use Permit within one year from approval to determine if there are any problems associated with the Permit and report their findings to the Planning Commission. The Planning Commission may direct that a public hearing be held to review the permit as specified in Section 29.20.310 of the Town Code.**
15. LAPSE FOR DISCONTINUANCE. If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year, the approval lapses pursuant to Section 29.20.340 of the Zoning Ordinance.
16. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

17. 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.
18. 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.
19. 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.
20. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
21. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.



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

Los Gatos Planning  
Commissioners: Michael Kane, Chair  
Tom O'Donnell, Vice-chair  
John Bourgeois  
Marcia Jensen  
Phil Micciche  
Joanne Talesfore

Director of Community  
Development: Bud Lortz

Assistant Director of  
Community Development: Randy Tsuda

Town Attorney: Orry Korb

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

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

LOS GATOS PLANNING COMMISSION 9/10/2008  
Item #1, 330 N. Santa Cruz Avenue

CHAIR KANE: We go continued public hearings and  
we have one. Now Commissioners, as you know I'm a candidate  
for Town Council, and this item's Applicant and the  
Applicant's family have been and/or will be very involved  
in my campaign. I've discussed the matter with the Town  
Attorney and based on that discussion I feel it is  
appropriate to recuse myself from this application. The  
Vice-chair was notified and will take over and I will  
return with the discussion is concluded.

COMMISSIONER O'DONNELL: Okay, we have the one  
continued public hearing, which is Item #1. It relates to  
330 North Santa Cruz Avenue. It relates to a conditional  
use permit requesting approval to modify that conditional  
use permit to allow full liquor service with modified hours  
of operation. The property is zoned C-2. The property owner  
is Meldimar, LLC. The Applicant is Richard Cole and M.S.D.  
Restaurant Co., LLC. The item is continued from August 27<sup>th</sup>,  
2008. Ms. Baily, do we have a report?

SANDY BAILY: Yes, we do. Ms. Mosley will be  
giving that.

MARNI MOSELEY: Thank you, Commissioner  
O'Donnell. As Commissioner O'Donnell previously stated,

LOS GATOS PLANNING COMMISSION 9/10/2008  
Item #1, 330 N. Santa Cruz Avenue

1 this application was continued from the Planning Commission  
2 meeting of August 27, 2008 due to a lack of time in that  
3 meeting. The Applicant has taken over an existing  
4 restaurant space previously occupied by Transylvania and is  
5 proposing to modify the conditional use permit. The  
6 property is located on the east side of North Santa Avenue  
7 in the C-2 central business district just opposite Almendra  
8 Avenue.

9           The Applicant is seeking to increase the hours of  
10 operation to include 10:00am until 11:00pm Sunday through  
11 Thursday and 10:00am until 1:00am on Friday and Saturday.  
12 They are also looking to modify their liquor license to  
13 include full liquor service. The application does not  
14 propose to increase or modify the seating or existing  
15 restaurant space. Due to the type of modifications being  
16 proposed, the application is to be reviewed by the Planning  
17 Commission for recommendation to the Town Council. The  
18 Applicant's request for additional hours beyond 10:00pm  
19 requires the deciding body to make the additional findings  
20 under Section 6 of the Town Alcohol Policy included in the  
21 original Staff Report as Exhibit #7.

22           The Applicant has been instructed to speak with  
23 the neighbors. From the time of application Staff had not  
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1 been made aware of any neighbor concerns until the Planning  
2 Commission meeting of August 27<sup>th</sup>; at that meeting a letter  
3 of opposition was submitted to Staff by neighbors on  
4 Almendra Avenue. This letter is included as Exhibit #10 in  
5 the Staff Report you received this week. Staff has not  
6 received any additional comments from either the Applicant  
7 or the neighbors since that meeting.

8           This concludes Staff's report and we are here if  
9 you have any questions.

10           COMMISSIONER O'DONNELL: Commissioners, do you  
11 have any questions? Commissioner Micciche.

12           COMMISSIONER MICCICHE: The recommended Conditions  
13 of Approval, Exhibit #3, I just noticed it this evening or  
14 I would have called you, but Item #3 indicates hours of  
15 10:00am to 10:00pm. Isn't that what's being modified?

16           MARNI MOSELEY: Hold on one second while I locate  
17 the conditions. The conditions that were included in the  
18 Staff Report are such as the Town Code states under the  
19 Alcohol Policy. If you can make the findings to allow them  
20 to go beyond the 10:00pm, then you'll need to change those.

21           COMMISSIONER MICCICHE: If they're modified under  
22 the condition. Thank you.

23           COMMISSIONER O'DONNELL: Commissioner Bourgeois.  
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1 COMMISSIONER BOURGEOIS: Thank you. Do we know if  
2 there are any other businesses in the vicinity that have  
3 similar hours open to 1:00am, like Double D's or CB  
4 Hannigan's?

5 MARNI MOSELEY: We circulated a similar... I think  
6 we did when Cin-Cin went through. Do you want to pass that  
7 around? We have Los Gatos Bar & Grill is open till 1:00.  
8 Los Gatos Brewing Company is open till 1:00. Cin-Cin is  
9 open till midnight. The Tai-Rific is open till midnight,  
10 and Dio Deka is open till midnight, and Steamers and  
11 California Café is open till 2:00am. One note to make on  
12 those is that I think all except for Cin-Cin were approved  
13 prior to the Alcohol Policy going into affect.

14 COMMISSIONER BOURGEOIS: That was my next  
15 question. Thank you.

16 COMMISSIONER O'DONNELL: Any other questions?  
17 Yes, Commissioner Talesfore.

18 COMMISSIONER TALESFORE: I have a question about  
19 sound systems in restaurants. When I did visit the site I  
20 noticed that there were speakers mounted on the outside of  
21 the restaurant and I'm must wondering do we have something  
22 that guides us with outdoor speakers with music, or what's  
23 going on with that?  
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1 MARNI MOSELEY: The speakers would be regulated  
2 through our noise ordinance, so it would be subject to the  
3 decibel requirements, and if there is a complaint regarding  
4 the noise levels the police would go out and take their  
5 noise meters and determine whether or not the noise  
6 exceeded the requirements.

7 COMMISSIONER TALESFORE: Okay, thank you for now.

8 COMMISSIONER O'DONNELL: I have a question on  
9 that answer actually. Does that mean then that we could not  
10 condition outside speakers?  
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12 MARNI MOSELEY: No, you could condition that they  
13 be removed.

14 COMMISSIONER O'DONNELL: Okay, thank you. Any  
15 other questions? Seeing none, I will now open the public  
16 hearing. The Applicant will have five minutes to speak.  
17 After that, public members who have hopefully given us a  
18 card that they want to speak will be asked to speak. Then  
19 when they have spoken the Applicant will have up to three  
20 minutes to respond, and then if there are no questions from  
21 the Commissioner we will close the public hearing and  
22 decide what to do. So I would ask the Applicant to come  
23 forward and make his presentation.  
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1 GREG KAYS: Good evening, my name is Greg Kays,  
2 K-A-Y-S. I did fill out a card and submitted it; hopefully  
3 it made it up there. I apologize on behalf of Mr. Cole;  
4 he's ill and could not be here tonight, so I am here in his  
5 stead for the Applicant.

6 I would just like to kind of brief you on where  
7 the Applicant is today. The Applicant did open for business  
8 on Monday and they're in operation right now. It's a lovely  
9 looking restaurant and I think it's a great addition to  
10 North Santa Cruz. Your concern though is what does this  
11 offer in terms of why the later hours, and I want to go  
12 right there, because that is I think the key issue tonight.

13 This is a restaurant and what it brings to Los  
14 Gatos is the late-night dining experience, the late-night  
15 dining availability, which is not really currently  
16 available. I think Cin-Cin, which has come in on Village  
17 Lane behind this restaurant, is offering that, and this  
18 business, which is known as Chicago Steak and Fish, wants  
19 to also offer that late-night dining experience which Los  
20 Gatos residents I don't think have a very good choice on  
21 right now.

22 It is a restaurant; I want to emphasize that.  
23 I've seen the letter of protest that was submitted. This is  
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1 not a bar; it is a restaurant. The owners are quite  
2 familiar with the requirements that food be served with  
3 alcoholic beverages, and food not being an appetizer, food  
4 being a meal. This is a family that has operated Gardino's  
5 restaurant for years in Los Gatos. This is the sister and  
6 she has now opened this restaurant and wants to move  
7 forward with the hours as specified to 11:00 o'clock Sunday  
8 through Thursday and until 1:00 o'clock on Fridays and  
9 Saturdays. They also want to upgrade their license from a  
10 beer and wine to a full liquor license.

11 I don't know if any of you have visited the site  
12 or are familiar with the site, but if you actually go into  
13 the restaurant you will see that there is no separate bar.  
14 It is not set up that way; it is set up like a restaurant.

15 There is outdoor seating and there was a mention  
16 of speakers. There are two speakers above the outdoor area.  
17 The function of those speakers is to provide low-level  
18 background music; that's all it is. I would be surprised if  
19 someone could hear those speakers on the other side of  
20 North Santa Cruz Avenue. The function of this restaurant is  
21 to provide a dining establishment where people can have  
22 nice food and nice conversation. The function is not to  
23 drown out conversation with music, and so these speakers, I  
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1 didn't measure them, but they're not very large, and again,  
2 that function is for background music in the outdoor area.

3 If you have any questions of me I'm happy to  
4 address those. Yes?

5 COMMISSIONER O'DONNELL: Yes, please go ahead.

6 COMMISSIONER JENSEN: Mr. Kays, I was curious  
7 about two things: One is if you're open until 1:00 o'clock,  
8 is your kitchen actually going to be open and serving meals  
9 until, I don't know, 12:45, regardless of whether there's  
10 somebody in your restaurant eating?

11 GREG KAYS: Absolutely.

12 COMMISSIONER JENSEN: Having had the experience  
13 of saying yay, I can get dinner at 10:00, and going to  
14 another restaurant you mentioned that's open till 11:00 and  
15 being told our kitchen is closed, because nobody is  
16 cooking, I thought well okay. So are you prepared to commit  
17 that your kitchen will be open and serving full meals until  
18 1:00 o'clock in the morning?

19 GREG KAYS: Yes.

20 COMMISSIONER JENSEN: And if so, who do you  
21 anticipate is going to be coming and eating at 1:00 o'clock  
22 in the morning?

1 GREG KAYS: Well, in discussions with the owners,  
2 I think there's an expectation that people who have gone to  
3 events in downtown San Jose, perhaps a Sharks game, perhaps  
4 a concert, who have maybe not been able to have dinner and  
5 maybe have gone from work or gone from something else and  
6 caught that Sharks game, or caught that concert, or caught  
7 that event in some other locale, have not had a chance to  
8 have dinner, and now they're returning home, and maybe they  
9 don't get back to Los Gatos until sometime after midnight.  
10 If they want to stop in for a meal, they're there to serve  
11 them, and if they're not going to have a meal, they're not  
12 going to be served alcohol.

13 COMMISSIONER JENSEN: Okay, thank you.

14 COMMISSIONER O'DONNELL: Any other questions?  
15 Commissioner Bourgeois.

16 COMMISSIONER BOURGEOIS: Thank you, and I  
17 appreciate your comments and cutting right to the chase. I  
18 mean you're obviously familiar with the fact that for this  
19 body to make a recommendation for extending the hours we  
20 have to make certain findings, and you touched on two of  
21 those findings that I think you understand are going to be  
22 of concern. One is that there has to be a clear community  
23 benefit, and so what I'm hearing you say is that filling  
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1 that niche is your community benefit, and secondly, we have  
2 to make the finding that it will not adversely impact  
3 adjacent residential neighborhoods.

4 My concern is that when I see the setup of how  
5 you're set up, you have those doors that completely open  
6 the restaurant up to your outer seating area; I'm assuming  
7 in nice weather you can open that whole thing up, so at  
8 1:00am you're facing right out to a residential street, so  
9 I would hope that you will listen to the public testimony  
10 we hear and come back and help us understand why you think  
11 you will not adversely affect the neighbors. So I'm not  
12 necessarily looking for a response, but I just want to make  
13 it clear that's definitely a finding we need to make.

15 GREG KAYS: Could I get a clarification on your  
16 comment?

17 COMMISSIONER BOURGEOIS: Sure.

18 GREG KAYS: The street that we face out onto is  
19 North Santa Cruz. Now, Almendra does T into it at that  
20 point, but the properties at the top of the T there, or  
21 whatever you want to call it, those are also commercial  
22 properties, and in attempting to speak to some of the  
23 residents on Almendra, we found that even as you go up  
24 Almendra some of those properties are businesses that close  
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1 at 5:00, so I don't know exactly how far up the noise from  
2 just the restaurant will carry, but I mean you've got an  
3 awful lot of traffic there on North Santa Cruz Avenue  
4 whether it's 10:00 o'clock, 11:00 o'clock, 12:00 o'clock or  
5 1:00 o'clock. So again, if you're talking about the  
6 residential street being Almendra, then I do understand  
7 that.

8 COMMISSIONER O'DONNELL: I have a question. You  
9 said there is no bar in the setup. I did go look at the  
10 property, and maybe I misunderstood what appeared to be a  
11 bar, you can call it a counter, but it had as I recall high  
12 seats in front of this whatever you want to call it, it  
13 looked like a bar to me, and I'm not criticizing that,  
14 you're not serving hard alcohol at the moment. But do you  
15 not consider that... If you're going to serve a mixed drink  
16 or something, wouldn't you serve it at that location?

18 GREG KAYS: Well that's actually a waiting area,  
19 and those stools or chairs that you speak of, I view that  
20 as a counter, and I understand what you're speaking about.  
21 I think it's three or four seats, and in my view that's not  
22 a bar, that's part of the waiting area. Now can someone  
23 actually sit there and have a drink? I suppose they could,  
24 but the problem with that is conceptually they need to be  
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1 ordering a meal, so we would be serving them a meal at that  
2 counter rather than letting them sit there and have a  
3 drink. Otherwise we wouldn't be in compliance.

4 COMMISSIONER O'DONNELL: Where will the liquor be  
5 held from which you will be able to make the drinks?

6 GREG KAYS: Well I assume it's behind that,  
7 because that goes into the kitchen area, it would be behind  
8 the counter in that area.

9 COMMISSIONER O'DONNELL: What I was curious about  
10 is if in fact you have the liquor right behind what you  
11 call the counter, which looks like a bar to me, then the  
12 natural thing would be for somebody to sit at that counter  
13 and order a drink, and perhaps order dinner, I'm not  
14 arguing that point, but if you're intending to put the  
15 liquor immediately behind the counter, it helps the counter  
16 more to look like a bar, so I just want to be clear, is  
17 that the location of the liquor?

18 GREG KAYS: That is the location of the liquor.  
19 Perhaps I deal with too many people who actually have bars,  
20 but when I see that I see a waiting area with a small  
21 counter. Someone can sit there and wait to be seated.

22 COMMISSIONER O'DONNELL: Thank you for helping  
23 me. Yes, Commissioner Talesfore.  
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1 COMMISSIONER TALESFORE: I'd like to continue  
2 along those lines, because I have another question that  
3 kind of goes with that. So if I were to come to your  
4 restaurant, let's just do this scenario with me, and I had  
5 four people with me and my reservation wasn't ready-I'm  
6 assuming you're going to take reservations, I don't know  
7 that-but my reservation wasn't ready, would I be able to go  
8 over to this-I thought it was a bar as well-bar area and  
9 order a drink before my table was ready?

10 GREG KAYS: Not unless you order food, because  
11 the conditional use permit that's in existence requires  
12 that there be no alcoholic beverages sold without food.

13 COMMISSIONER TALESFORE: Okay, that's what I  
14 needed to know for now. Thank you. Can I ask another  
15 question? This is going to another area, and I know it's  
16 not what we're looking at, but an area of landscaping. Are  
17 you planning on putting any kind landscaping around the  
18 patio area at all?

19 GREG KAYS: The front seating area?

20 COMMISSIONER TALESFORE: Mmm-hmm, and by  
21 landscaping I mean just something to soften it, perhaps to  
22 not make it appear so hard-edged. You know, you could put  
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1 plants in a pot, low hedges, something. I'm must curious.  
2 Maybe you can think about that.

3 GREG KAYS: Honestly I don't know, but I'm  
4 looking to one of the family here; he's nodded that they  
5 are planning on doing that.

6 COMMISSIONER TALESFORE: Okay, and then just one  
7 more. I'm sorry.

8 COMMISSIONER O'DONNELL: Go ahead.

9 COMMISSIONER TALESFORE: Just one more is I know  
10 you have outdoors dining. Will you have heaters as well?

11 GREG KAYS: Yes.

12 COMMISSIONER TALESFORE: Okay, and what will  
13 happen to that furniture and the heaters at night? Will  
14 they be left out there or will they be taken in?

15 GREG KAYS: After closing?

16 COMMISSIONER TALESFORE: Yes.

17 GREG KAYS: Oh, I would assume everything would  
18 be brought in.

19 COMMISSIONER TALESFORE: Okay, that's what I  
20 needed to know. All right, thank you.

21 COMMISSIONER O'DONNELL: Are there other  
22 questions? Seeing none, Thank you very much. You'll have an  
23 opportunity for rebuttal.

24  
25  
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15

1 GREG KAYS: Thank you.

2 COMMISSIONER O'DONNELL: And now I'm just going  
3 to call the cards I have here. The first card I have is  
4 Susan Lee, and you'll have up to three minutes to speak.

5 SUSAN LEE: Thank you. Can you hear me?

6 COMMISSIONER O'DONNELL: Yes, I can.

7 SUSAN LEE: Hello, my name is Susan Lee and I  
8 live at 227 Almendra Avenue. I have a petition here signed  
9 by 16 of the homes and the businesses on Almendra Avenue,  
10 that includes the businesses close to the T, who are  
11 evidently concerned about that despite the fact that they  
12 close at 5:00, perhaps because of property damage from  
13 people leaving, I don't know why, but they also would like  
14 to object to the time changes. I'll summarize the petition  
15 later if I have time, which I may not, because I want to  
16 add to some points that you had mentioned.

17 Nobody tried to speak to the residents until this  
18 last Saturday about their plans to open.

19 I've lived around the world, I've lives all over  
20 the world, and never really in America have I seen people  
21 who eat that late at night. Most people in America in my  
22 experience tend to eat somewhat on the earlier side, unlike  
23 Latin American countries where they eat around 10:00 or  
24

25  
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16

1 11:00, so I believe that with the extended hours Chicago  
2 Fish and Steak will change from being a restaurant to being  
3 a bar. I actually have the closing times of the  
4 restaurants, which differ from the ones that you had  
5 mentioned. I actually called them, and most of the  
6 restaurants seem to close around 10:00pm and the bars close  
7 around 2:00. I can give you the list that I made up, but I  
8 actually called them recently.

9  
10 With their open doors, they had an opening party  
11 last weekend, which I could hear from my house. There were  
12 people out. They were open reasonably late, I think around  
13 10:00, but I could definitely hear them, and so my question  
14 is what parties are they going to have in the future? CB  
15 Hannigan's, the bar behind us, had a lobster festival this  
16 last weekend, and it started out many years ago they had a  
17 small, containable party that we were thrilled to go to,  
18 and it was out of control. The music was so loud our  
19 windows were vibrating. We called the police; nobody came  
20 over, the parking was horrendous, and my question is what  
21 control do the residents have once something starts in  
22 order to dial it back? That doesn't seem to be possible.

23 Even if they were to close their doors at 10:00  
24 o'clock, I think that having an additional what I really do  
25

1 believe is a bar from seeing the setup, would lower the  
2 value of our houses. I currently have to call the police  
3 several times a year for some of the other bars in the area  
4 to report noise or intoxicated customers; sometimes the  
5 police respond, sometimes they don't. My neighbors have  
6 complained about people vomiting in their front yards. The  
7 party at CB Hannigan's, we weren't even able to take our  
8 children outside on a warm weekend night, because the music  
9 was so loud, and nobody consulted us, we had no say in the  
10 matter.  
11

12 I understand that the current economy is poor,  
13 but I'm looking long-term. One of the questions I have for  
14 the Planning Commission is will this permission to stay  
15 open late pass to the next tenant? Just let us know. Thank  
16 you.

17 COMMISSIONER O'DONNELL: Thank you. Are there  
18 questions of the speaker? Thank you very much. The next  
19 speaker is Kerri DiCicco.

20 KERRI DiCICCO: I'm Kerri DiCicco and I live at  
21 238 Almendra and I've lived in Los Gatos since I graduated  
22 from college in the Midwest; I've lived here for 15 years  
23 and for 10 years I've lived on Almendra Avenue.  
24  
25

1 One of the things that kind of made our decision  
2 to move into downtown, my husband being from downtown Palo  
3 Alto, is that it has more of a family feel. You come to  
4 downtown Los Gatos and it just looks like a very nice  
5 place.

6 I for one am really excited that Chicago Steak  
7 and Fish is coming, because every time something closes and  
8 something else opens up it's like oh gosh, is it going to  
9 be a nail salon or an art gallery? We would like a nice  
10 place to eat, and we've been to Gardino's, we really like  
11 that place, so on the restaurant side I am excited and plan  
12 to eat there.

13 But from living downtown for so many years, it's  
14 gotten to the point lately where it is just a struggle to  
15 live here. I have a two year old and a five year old, and  
16 we've had toys stolen, we've had people throwing up in our  
17 yards. Susan's had a stroller stolen. I don't think it's a  
18 restaurant's problem, but I do think a bar open that late  
19 will definitely contribute to patrons leaving intoxicated.

20 Just this last Saturday we called the police  
21 twice. We called the police at 9:45 because we had people  
22 in town for my son's birthday, no place to park. We called  
23 again at 11:00 and no one came. We called again a little  
24  
25

1 bit after 11:00; there's still no parking and it's  
2 extremely loud. My husband held the phone out for the  
3 police dispatcher and she could hear Hannigan's from our  
4 balcony. So there's no control until someone complains, and  
5 complaining because you're short-staffed on the parking  
6 people, short-staffed on the police department, we're being  
7 ignored.

8 So having another what looks like a bar, if  
9 you've been there you'll see that the bar/counter is the  
10 biggest part of that area, that is going to lead to people  
11 drinking. Even if they're eating food they're still going  
12 to be drinking, they're going to be parking on our street;  
13 they're going to be loud. We've called the police once,  
14 because there was a man beating up his girlfriend in front  
15 of our house and they had come from a bar downtown, so with  
16 that experience in mind we would really like to just keep  
17 the hours as it is with the restaurant, and welcome the  
18 restaurant.

19 My question would be they're going to be open two  
20 additional hours, what marketing research has been done to  
21 show-I don't think anybody eats a steak at midnight, quite  
22 frankly-but to show what additional revenue they're going  
23 to be bringing in? Late-night dining isn't in Los Gatos  
24  
25

1 because it doesn't work. This is not the kind of community  
2 where you go and eat a steak at midnight. It doesn't  
3 support, enhance or benefit the community and definitely  
4 not my little neck of the woods, and that's why I'm here.  
5 So that's my spiel if you have questions for me.

6 COMMISSIONER O'DONNELL: Thank you. I think we  
7 have that question here. Commissioner Bourgeois.

8 COMMISSIONER BOURGEOIS: Thank you for showing up  
9 tonight and giving us your input. Were you able to hear the  
10 event on Saturday or whenever it was that Ms. Lee was  
11 talking about?

12 KERRI DiCICCO: I don't think it was this past  
13 Saturday, because all I could hear was Hannigan's, and I  
14 have walked past before and I believe there's a TV in the  
15 corner.

16 COMMISSIONER BOURGEOIS: But whatever grand  
17 opening party or whatever they had at the restaurant, you  
18 were not able to hear it from your home?

19 KERRI DiCICCO: I couldn't distinguish if it was  
20 that or Hannigan's, quite honestly.

21 COMMISSIONER BOURGEOIS: I don't know which way  
22 the numbers run. Are you closer to North Santa Cruz or  
23 further away from North Santa Cruz?  
24  
25

1 KERRI DiCICCO: We are about right across the  
2 street from each other, and between my husband and I one of  
3 us is always home, and didn't hear anything either.

4 COMMISSIONER BOURGEOIS: Thank you.

5 COMMISSIONER O'DONNELL: The next speaker is Don  
6 Southard.

7 DON SOUTHARD: Thank you. My name is Don  
8 Southard, 231 Almendra Avenue. My wife and I have lived  
9 there in Los Gatos for coming up on five years now. I'm CEO  
10 of a medical device company in Mountain View and spend the  
11 better part of an hour commuting down to Mountain View  
12 everyday and schlepping back so I can live in this  
13 beautiful place. It's a great town, wonderful people. The  
14 governance is second to none; having us be given an  
15 opportunity to talk about this is fantastic in and of  
16 itself. We avail ourselves of the shops and the restaurants  
17 and all of the amenities, the Sunday afternoon concerts and  
18 the Christmas tree lighting and all this stuff that's so  
19 cherished here. So I think we got it 95% right.

20 I, like my two neighbors here, have concerns  
21 about not the restaurant, and I have been to the other  
22 restaurant on Santa Cruz and it's a great place, and the  
23 guy who runs it is a really good guy, and I've had many  
24  
25

1 conversations with him. The problem that I have is what my  
2 neighbors said, which is any night after 10:30 or 11:00 on  
3 any given day, people are urinating on my fence, throwing  
4 up in our yards, swearing and shouting obscenities as they  
5 walk out of the bars there, waking up us and our small  
6 children in many ways, and then they get in their cars and  
7 race up and down our street.

8           The Town is a great town and it's got a lot of  
9 things going for it. I don't think having extra alcohol  
10 after 10:00 o'clock helps anybody. Thank you.

11           COMMISSIONER O'DONNELL: Are there any questions?  
12 Ms. Talesfore.

13           COMMISSIONER TALESFORE: My question is, your  
14 house, is it closer to Santa Cruz or farther?

15           DON SOUTHARD: It's next door on the other side  
16 of Santa Cruz from Susan's.

17           COMMISSIONER TALESFORE: Okay, thank you.

18           COMMISSIONER O'DONNELL: Any other questions?  
19 Thank you very much. The next speaker card I have is for  
20 Michael Silva. That also is the last speaker card I have,  
21 so if anybody else wants to speak, they should get us a  
22 card.  
23  
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1           MICHAEL SILVA: Thank you, Michael Silva. I'd  
2 like to speak in favor of Chicago Steak and Fish for their  
3 application to have extended hours, and as well full liquor  
4 license. I've known this family for a long, long time. As  
5 has been stated, they run Gardino's. They're a family that  
6 really loves this town, they do lots of things for this  
7 town, they're integrity is just phenomenal. I've had the  
8 opportunity to talk with them in the planning and formation  
9 of putting this restaurant together. They've been very  
10 serious about it.

11           In regard to the alcohol, right from the  
12 beginning, yes, the alcohol will help to boost their bottom  
13 line, their profits. It will also help revenue-wise for the  
14 Town as well. Absolutely it was hey, what kinds of problems  
15 will we have with this? A potential problem would be you  
16 have people coming from the Black Watch, you'd have people  
17 these late nights want to come over there, grab a drink,  
18 because that's what they do, they run around and hit all  
19 the bars. That kind of element they don't want in this  
20 restaurant. This is a class act. They don't want that. If  
21 you're not ordering food, if you're not having dinner,  
22 you're not drinking. Don't come here; get out, that kind of  
23 thing.  
24  
25

1           There was comment about the noise, the speakers.  
2 These speakers, I was at the opening, the tasting dinner  
3 last week, and there were a lot of people there. There were  
4 100 people there. There was no way you could hear that  
5 music whatsoever. It's background only; it's just a little  
6 complement. The doors in the front will open to various  
7 sizes, so seasonally in the summertime it might be open,  
8 because it allows the air to come in and it's kind of nice,  
9 but during fall and winter and whatnot they're going to be  
10 closing those things down a little bit, because it would  
11 just be too doggone cold; they don't want their customers  
12 to be freezing to death.

13  
14           As far as the bar is concerned, it's not really a  
15 bar; it's more like a service area. It would be a service  
16 bar; people are going to be sitting there eating dinner as  
17 they were last week at their tasting, so it's not really a  
18 bar. Yeah, it looks like a bar, and that's a good place to  
19 keep the stuff, but it adds to the phenomenal ambiance;  
20 people just love that thing.

21           And there were comments about the drunks running  
22 around in the streets and things like that in reference to  
23 Hannigan's. That's a one time a year fundraiser thing that  
24 happens there. It's publicized for months in advance. All  
25

1 the folks in the neighborhood know about it, they're  
2 welcome to complain about it one time a year. It's been  
3 going on for so long, I think it's an emotional point at  
4 this point, trying to push this thing across. Cin-Cin was  
5 approved to have extended hours and alcohol and whatnot,  
6 and that kind of sets a precedent in my mind. These people  
7 should have the same opportunity. Thank you.

8           COMMISSIONER O'DONNELL: Thank you very much.  
9 Let's see if we have any questions before you sit down. Any  
10 questions of Mr. Silva? Thank you again. All right, hearing  
11 no other speakers opposing this, I'll ask the Applicant to  
12 come back. You have three minutes.

13  
14           GREG KAYS: Thank you. I would like to kind of  
15 take up on that last point with reference to places like  
16 Hannigan's or the Black Watch or whatever. This place is  
17 light years away from what those places are in the sense of  
18 what they're going to be serving and how they're going to  
19 be serving it. No one, absolutely no one, would be happy  
20 with what these folks experience at their homes. No one  
21 would be happy with that, but none of that, none of that,  
22 is related to Chicago Steak and Fish, and to say that  
23 Chicago Steak and Fish cannot have its application go  
24 forward and cannot have its application granted because of  
25

1 circumstances that exist because of other businesses,  
2 businesses that are quite frankly bars, I don't think it's  
3 fair to the Applicant and I don't think it's fair to paint  
4 everyone with the same brush. Simply because you serve  
5 alcohol does not mean that you're all the same, and  
6 certainly this family has demonstrated with their years of  
7 business in Los Gatos that they're not going to go the  
8 direction of being yet another problem to the neighbors.  
9 Not only do you have the firm commitment that they've made  
10 through the planning process and it's being made tonight,  
11 but you have the commitment of all those years of business  
12 where they have been good business people in Los Gatos and  
13 have supported the Town and have not been a problem.

14 So that would be the sum and substance of what I  
15 would like to convey to you at this point. If there are  
16 additional comments or questions I'm happy to address them.

17 COMMISSIONER O'DONNELL: Questions? Commissioner  
18 Talesfore.

19 COMMISSIONER TALESFORE: Thank you for explaining  
20 that. We have to look that there could be potential  
21 problems whenever we have any application for conditional  
22 use for full bar. I mean that's what we have to do. So  
23 there could be a potential here, and this is a new  
24  
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1 restaurant in a new location. So with that being said, I'm  
2 wondering, because it seems to be a concern of the  
3 neighbors and we have to be sensitive to that, have you  
4 developed or thought about developing a plan to meet with  
5 the neighbors perhaps twice a year to check in with them?  
6 How's this going? Either invite them to your restaurant or  
7 ask them to have the neighbors come to a home. We have  
8 precedence of that with some other restaurants in town;  
9 Campo di Bocce that was here a few weeks ago has agreed to  
10 do that for the same reason.

11 GREG KAYS: Well I'm certain that Chicago Steak  
12 and Fish would do that very same thing. The only thing I  
13 would say about that is that the neighbors have a lot of  
14 complaints relative to a lot of places of business other  
15 than a particular restaurant, so yes, we're happy to meet  
16 with the neighbors.

17 COMMISSIONER TALESFORE: Thank you. That's fine.

18 GREG KAYS: If they think that keeping those  
19 doors open is causing them noise problems, yes, my client  
20 will regularly meet with the neighbors and try to work  
21 these problems out.

22 COMMISSIONER TALESFORE: Thank you.  
23  
24  
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1 COMMISSIONER O'DONNELL: Other questions? Go  
2 ahead, Commissioner Micciche.  
3 COMMISSIONER MICCICHE: This counter or bar or  
4 whatever it might be, is there any reason to have seats  
5 there? It seems to me it would introduce or encourage maybe  
6 trying to order a drink from there. Is it primarily used as  
7 a service bar for your waiters and waitresses to come and  
8 get the drinks? Where do they get the drinks to bring to  
9 the tables?  
10 GREG KAYS: They would get them at that station.  
11 COMMISSIONER MICCICHE: So it's really a service  
12 bar that they go to?  
13 GREG KAYS: That is one of it's functions, but  
14 it's a relatively small restaurant in that sense and it's  
15 designed to be part of the waiting area so people can  
16 actually sit there and wait for a table, so it serves many  
17 functions, it's not just a service bar.  
18 COMMISSIONER MICCICHE: I guess what I'm asking is  
19 since it may encourage it being treated like a bar, would  
20 you consider removing those from the counter?  
21 GREG KAYS: Removing the stools?  
22 COMMISSIONER MICCICHE: Stools, yeah.  
23  
24  
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1 GREG KAYS: I think that takes away from the  
2 seating area; that takes away from the waiting area.  
3 MALE: They can eat there.  
4 GREG KAYS: And they can eat there.  
5 COMMISSIONER O'DONNELL: If you'd like to talk,  
6 you could come up.  
7 MALE: No, that's fine.  
8 GREG KAYS: As I indicated in my first  
9 presentation, they can eat meals there. So they could  
10 actually sit there and if they don't want to wait for a  
11 table they could actually sit there and if they don't want  
12 to wait for a table, they can sit there and have a meal  
13 there, so it's multi-purpose. For being such a small space,  
14 it serves a lot of functions.  
15 COMMISSIONER MICCICHE: That's fine. You've  
16 answered it.  
17 COMMISSIONER O'DONNELL: Commissioner Talesfore,  
18 you have a follow-up?  
19 COMMISSIONER TALESFORE: I just wanted to follow-  
20 up on that. I heard you say two things for this area: it's  
21 a service area and it's a waiting area and it's an eating  
22 area, that's like three things.  
23  
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1 GREG KAYS: It depends on if there are tables  
2 available. It would really depend on the conditions.  
3 COMMISSIONER TALESFORE: Okay, thank you.  
4 COMMISSIONER O'DONNELL: I have one question. I'm  
5 embarrassed to admit I haven't been to Gardino's, so I  
6 don't know, does Gardino's serve hard alcohol?  
7 GREG KAYS: No, I think they've always had just a  
8 beer and wine list.  
9 COMMISSIONER O'DONNELL: So is it fair to say  
10 then this is their first experience with a bar? Well, not a  
11 bar.  
12 GREG KAYS: It's not a bar.  
13 COMMISSIONER O'DONNELL: It's not a bar. Hard  
14 alcohol.  
15 GREG KAYS: In terms of serving it in a  
16 restaurant setting, to my knowledge it is.  
17 COMMISSIONER O'DONNELL: Okay, and nothing wrong  
18 with that. I was just curious, because we're talking about  
19 experience. Any other questions? If there are not, thank  
20 you very much. I will close the public hearing. I'll also  
21 ask the Commissioners to disclose who has visited the site  
22 and is there anything else that one should disclose before  
23 we discuss and make a motion? All right. That being the  
24  
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1 case, let's go ahead and start with the discussion. Does  
2 somebody remember Michael's order? I think that's  
3 Commission Bourgeois.  
4 COMMISSIONER BOURGEOIS: If I could ask a point of  
5 clarification first, then I'll make my comments. So we have  
6 basically two requests in front of us: one is for an  
7 extension of time and the other is for the full liquor  
8 service. Are the findings the same, because I know to extend  
9 beyond 10:00pm we have to make the findings in Exhibit #7?  
10 Where are the findings we have to make to make a  
11 recommendation, or do we have to make findings to recommend  
12 full liquor?  
13 MARNI MOSELEY: There are two findings you'd need  
14 to make, and you'd make the findings for the hours of  
15 operation; that's the first findings for the granting of  
16 service beyond 10:00, and then the full service alcohol is  
17 the other part as the conditional use permit.  
18 COMMISSIONER BOURGEOIS: And where are those  
19 findings?  
20 MARNI MOSELEY: That is the first bullet, Exhibit  
21 #2 in your first report. It was for the last meeting.  
22 COMMISSIONER BOURGEOIS: Okay. I got it.  
23 COMMISSIONER O'DONNELL: Do you have a follow-up  
24 question?  
25

1 COMMISSIONER BOURGEOIS: No, I'm ready to make my  
2 comments now.

3 COMMISSIONER O'DONNELL: Okay, go ahead.

4 COMMISSIONER BOURGEOIS: I think this applicant  
5 is beyond reproach. I mean Gardino's is a fantastic place,  
6 well respected; these are upstanding, great members of the  
7 community.

8 But what we have to look at is this is a  
9 conditional use permit that's going to go with the  
10 property, so this is not about the Applicant and who they  
11 are. This is about granting a use at a location, and that's  
12 all this is about, and to do that we have to make very  
13 specific findings. Where my concern comes in is if you look  
14 at the Alcohol Policy it says, "Strongly discourages new  
15 stand-alone bars," and if you saw this restaurant, what  
16 you're calling a counter someone else may call a bar and we  
17 may have a very different animal on our hands, so that's  
18 what concerns me.

19 Secondly, the finding of will not affect the  
20 neighbors; I don't feel like I have the evidence in front  
21 of me to make that finding to extend the hours beyond  
22 10:00pm. I've heard evidence from neighbors on Almendra  
23 that they heard your grand opening party, and maybe that  
24  
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1 was a little bit bigger crowd than is going to be on a  
2 normal weekend, I don't know, but with the evidence I have  
3 in front of me I can't make the findings to say that it  
4 will not affect the neighbors, and that's what we're bound  
5 to make, and so what we're making to Council is just a  
6 recommendation, they make the final decision, and so my  
7 recommendation would be not to extend the hours, but I'm  
8 okay with extending the liquor license.

9 COMMISSIONER O'DONNELL: Thank you. We're just  
10 going to move down the line, so Commissioner Talesfore, if  
11 you'd like to make some comments.  
12

13 COMMISSIONER TALESFORE: That was well said,  
14 John, and I know you've been in town a long time, I've been  
15 to your restaurant and enjoyed it many times, but this is a  
16 new restaurant in a new place and it happens to be adjacent  
17 to a neighborhood and we do have to be sensitive to that,  
18 so I would agree with John. I would probably have  
19 recommended we just do beer and wine for a certain amount  
20 of time to see how this all works and then have you come  
21 back before us; that would have been one of my comments,  
22 and then I would probably like to add some conditions to  
23 whoever makes the motion that I can bring up at that time.  
24  
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1 COMMISSIONER O'DONNELL: That would be fine.

2 Commissioner Micciche.

3 COMMISSIONER MICCICHE: You know, mine is a  
4 little bit different on this. I think that neighborhood is  
5 adversely affected right now by Hannigan's and others, and  
6 I don't see this restaurant more adversely affecting it  
7 from that standpoint, so I look at that definition a little  
8 differently than what's being stated right now. I think  
9 they would be very sensitive if there were issues they were  
10 having and I think they would respond; I believe that's  
11 true of this family and their reputation in this town. So I  
12 don't feel that way.

14 I do feel though however that the Sunday through  
15 Thursday extension I think is probably not necessary, but I  
16 do agree to be competitive with other restaurants in the  
17 area that extending the hours on Friday and Saturday nights  
18 would be appropriate. So those are my comments at this  
19 time.

20 COMMISSIONER O'DONNELL: Commissioner Jensen.

21 COMMISSIONER JENSEN: In the interest of bringing  
22 some direction to our discussion, maybe I'll make a motion  
23 and see what happens. Since our motion is simply a  
24 recommendation, my motion would be to recommend this  
25

1 application to the Town Council for approval with some  
2 modifications from what is indicated in the Staff Report.

3 Commissioner Bourgeois indicates that we have to  
4 find that there will be essentially no impact on the  
5 neighborhood. We don't have to find that; we only have to  
6 find that there would be no adverse impact, and we  
7 certainly have heard that other establishments have an  
8 adverse impact, but this one hasn't been really been tried  
9 out so I don't know that we could find that it would have.

11 My motion is that we recommend it with hours that  
12 are essentially the same as Cin-Cin, which was approved in  
13 the resolution that we got from Commissioner Bourgeois for  
14 hours from 11:30am to 11:00pm Sunday through Thursday and  
15 11:30am to midnight Friday and Saturday, and I don't see  
16 why it can't be that.

17 I also don't see why if my motion would include  
18 that there be a specific condition that their kitchen,  
19 regardless of the attendance at the restaurant, and  
20 regardless of how many people are serving, or regardless of  
21 when staff wants to go home, if that there were hours  
22 granted that you were open till midnight that your kitchen  
23 will remain open and be serving dinner till midnight,  
24 because that's not what's happening in other places. To my  
25

1 mind that would lend some comfort that you weren't just  
2 going to be a bar, because it certainly looks like if you  
3 want to stay open till 1:00 o'clock, you're a bar.

4         So if other people would go with a motion to keep  
5 the hours not until 1:00 o'clock in the morning on Friday  
6 and Saturday, but until midnight and until 11:00, and  
7 recommend approval for the full liquor license, and make  
8 the findings that are indicated in the Staff Report that  
9 there is a community benefit to late-night dining if your  
10 kitchen is actually open, which I would put a condition in  
11 that I'd recommend and to grant the liquor license, and  
12 that there would be no adverse impacts that we can find at  
13 least based upon this particular use, albeit only open  
14 since Monday.

15         We've heard testimony that CB Hannigan's is a  
16 problem. Well, we can't judge this application based on  
17 what happens at CB Hannigan's unfortunately. We can't do  
18 that; we have to consider each application on its own  
19 merits, and so my motion is to recommend approval with  
20 hours till I think I said 11:00 and midnight and a specific  
21 condition that your kitchen remain open and serve food all  
22 that time regardless of the conditions in the restaurant.  
23 That's my motion.  
24  
25

1 COMMISSIONER O'DONNELL: Is there a second?

2 COMMISSIONER MICCICHE: I have a question. I may  
3 second it, but I have a question.

4 COMMISSIONER O'DONNELL: I want to make a comment  
5 too, but before then I'll be glad to go back, but if  
6 there's a second we can comment on the motion.

7 COMMISSIONER MICCICHE: I'll second it.

8 COMMISSIONER O'DONNELL: All right, so we have a  
9 motion and a second. Let me first say, Commissioner Jensen,  
10 you were not here when Cin-Cin was approved and you may not  
11 know, and you may know, that part of the discussion was  
12 Cin-Cin had a somewhat unique location. In fact,  
13 Commissioner Rice at that point made I thought a very  
14 intelligent remark about that and how it was unique, so I  
15 don't think Chic-Chin is wholly applicable.

16         I also think the restriction on keeping the  
17 kitchen open, I assume that would mean if the liquor were  
18 going to be served the kitchen ought to be open. Obviously  
19 if they decided to close early it wouldn't address that.  
20 Also, we had recently, and somebody will have to help me  
21 with memory, we had somebody who was going to be open for  
22 example till midnight, but the serving of liquor stopped  
23 one hour before, so we have some flexibility with that.  
24  
25

1 I would support the idea that I think 1:00  
2 o'clock in the morning is too late. I would also think that  
3 the problems that the neighbors are having obviously so far  
4 has not been with a restaurant that hasn't been open, and  
5 probably it's unlikely that it will be with this kind of  
6 restaurant, but I personally would feel more comfortable if  
7 it were to have liquor if the serving of liquor would stop  
8 earlier and then perhaps another hour to close. That would  
9 perhaps be the best of both worlds. It would allow the  
10 restaurant to be open later, but it would also mean if  
11 somebody wants to sit there and have dinner for another  
12 hour, that's great, but there wouldn't be any more drinks.  
13 So I just offered those comments to the motion, and now  
14 I'll look for further comments.

16 COMMISSIONER JENSEN: Well if you'd like me to  
17 make that part of the motion, that would be to stop liquor  
18 service an hour before closing, that's fine with the maker  
19 of the motion, and if by saying that the bar cannot be  
20 open, that is no alcohol can be served unless the kitchen  
21 is open, that's fine with me. I just want to make sure that  
22 if there are extended hours that are ostensibly for the  
23 restaurant, there needs to be a restaurant.

1 COMMISSIONER O'DONNELL: All right, thank you.  
2 Does the seconder agree?

3 COMMISSIONER MICCICHE: Yeah, I have one point,  
4 but I do agree to that. The conditions were 10:00am to  
5 whatever they were.

6 COMMISSIONER JENSEN: Oh right, and I said 11:00  
7 by Cin-Cin, yes, so 10:00.

9 COMMISSIONER MICCICHE: Is 10:00 okay with you?

10 COMMISSIONER BOURGEOIS: Yes.

11 COMMISSIONER O'DONNELL: Okay, and Commissioner  
12 Talesfore.

13 COMMISSIONER TALESFORE: So let me understand the  
14 hours again. The hours will be from Sunday through Thursday  
15 till?

16 COMMISSIONER MICCICHE: 10:00am to 11:00pm.

17 COMMISSIONER JENSEN: Correct.

18 COMMISSIONER TALESFORE: Okay, and then on Friday  
19 and Saturday?

20 COMMISSIONER MICCICHE: 10:00am to midnight.

21 COMMISSIONER JENSEN: Midnight, with alcohol  
22 service ending an hour prior on each of those and the  
23 kitchen to be...

1 COMMISSIONER TALESFORE: I might be comfortable  
2 with that if we could perhaps, just because it is adjacent  
3 to a neighbor and I know there aren't problems yet, but  
4 there could be potential to problems, so just hear me out  
5 on this and I'd like to have your opinions, if we could  
6 possibly close the patio dining earlier, especially during  
7 the summer months at perhaps 10:00 o'clock Sunday through  
8 Thursday.

9  
10 COMMISSIONER TALESFORE: I won't support that as  
11 the maker of the motion, because you start having so many  
12 different closing hours that you can't keep track of it,  
13 and so either we should extend it or we shouldn't.

14 COMMISSIONER TALESFORE: Leave it at 10:00?

15 COMMISSIONER JENSEN: My motion is to extend the  
16 hours indicated to 11:00 and midnight with the bar closing  
17 an hour earlier, but I wouldn't want to add an extra  
18 closing obligation in the summer months.

19 COMMISSIONER O'DONNELL: Are there other  
20 questions or comments, because I have a question? I saw Mr.  
21 Korb come in just in time, because I have a question of him  
22 in a minute. Commissioner Talesfore, were you complete?  
23  
24  
25

1 COMMISSIONER TALESFORE: Well yeah, I would just  
2 ask what's an appropriate time to ask to see if we could  
3 get more conditions in there?

4 COMMISSIONER O'DONNELL: Yeah, let me ask a  
5 clarifying question.

6 COMMISSIONER TALESFORE: Yes, please.

7 COMMISSIONER O'DONNELL: Mr. Korb, we've had this  
8 discussion before. There is some concern here by  
9 Commissioner Talesfore as to outdoor serving and that kind  
10 of thing. I forget whether one can say this is what we're  
11 going to grant the conditional use permit, however these  
12 one or two things, whatever it is, are being granted for  
13 the limited time period of X, let's say a year or  
14 something, to evaluate how that is working and then you  
15 could do one of two things: You could say the Staff, the  
16 head of the department, can make the decision or it could  
17 come back to the Commission. I don't know whether we can do  
18 that or not.

19  
20 ORRY KORB: What we have generally done in the  
21 past is approve without condition, whatever it is that the  
22 Commission is concerned with, but set a future date to  
23 review performance essentially under the condition. What  
24 the Commission has is the authority, and I can't state the  
25

1 code section right off the tip of my tongue, but you do  
2 have authority under the code to review and reconsider in a  
3 public hearing context any approval if there is a question  
4 about whether that approval is in some way causing public  
5 health, safety, welfare problems, or resulting in a  
6 violation of the Conditions of Approval. Now I'm not saying  
7 that you can just easily take away something that you've  
8 previously granted, but what you do provide yourselves is  
9 the opportunity to at least review performance and if there  
10 are problems to set that hearing and to go into a due  
11 process proceeding.

12  
13 COMMISSIONER O'DONNELL: You both know vested  
14 rights, and I'm trying to avoid the vested rights issue.  
15 What I'm trying to say, and you've just told me I can't do  
16 it and that's fine, but give me a direct answer. Can I have  
17 them come back and not have a vested rights argument if  
18 we're to say... I know Commissioner Talesfore is concerned  
19 about outdoor dining, I'm not saying at the moment I agree  
20 with that or don't agree with that, I just want to know can  
21 you condition something so there is no vesting of the  
22 right, because what you're giving me is a revocation of the  
23 conditional use permit, which I don't want to fool around  
24 with.  
25

1 DIRECTOR LORTZ: No, I don't believe you can do  
2 it, unless the Applicant is willing to agree to that  
3 condition.

4 COMMISSIONER O'DONNELL: All right.

5 DIRECTOR LORTZ: And I would certainly invite the  
6 Commission to ask the Applicant if they are willing to do  
7 that.

8 COMMISSIONER O'DONNELL: Okay. Now Commissioner  
9 Talesfore, you had some other comments I think.

10 COMMISSIONER TALESFORE: Right. The other  
11 conditions I would like to see, and we had talked about  
12 this and had an agreement from the Applicant, was that the  
13 patio furniture and outdoor heaters be brought in, and they  
14 had agreed to that.

15  
16 COMMISSIONER TALESFORE: I don't have a problem  
17 with that. The main thing that concerns me is that the main  
18 thing we'd be doing here is recommending to the Town  
19 Council.

20 COMMISSIONER TALESFORE: Yes, it's a  
21 recommendation.

22 COMMISSIONER JENSEN: So the more specific we  
23 get, Mr. Korb can correct me, but I think that may be an  
24 issue. I would rather just yes, recommend things that are  
25



1 not so specific, and I don't have a vested interest in  
2 whether this motion succeeds or not, but I think by adding  
3 very, very specific conditions we might go beyond what  
4 we're supposed to do as a recommendation.

5 COMMISSIONER O'DONNELL: Mr. Korb, any comment on  
6 that?

7 ORRY KORB: No, I understand the concern, but you  
8 can certainly recommend conditions. You're not composing  
9 them, but you can certainly recommend conditions and the  
10 Council can consider them as Council wishes.

11 COMMISSIONER JENSEN: Okay, then I'm going to add  
12 bring the furniture in when you close.

13 COMMISSIONER TALESFORE: Okay. Thank you, and  
14 that's how I meant these conditions; they're under the  
15 recommendation of approval. And then the other one would  
16 be, and I think that they also agreed to this, that they  
17 would meet with the residents at least two times a year.

18 COMMISSIONER JENSEN: No problem.

19 COMMISSIONER TALESFORE: Okay, and then the last  
20 one was about the speakers, which I'm still very confused  
21 about on that, and I understand that it's supposed to be  
22 background music and low, but sometimes if someone's ear  
23  
24  
25

1 can't hear it, how do you measure that? How do we keep  
2 control of that?

3 COMMISSIONER O'DONNELL: Commissioner Talesfore,  
4 if you were to set a time limit on the speakers, might that  
5 address your concern?

6 COMMISSIONER TALESFORE: Yes.

7 COMMISSIONER O'DONNELL: For example, if you  
8 couldn't use the speakers after 9:00 o'clock or whatever?

9 COMMISSIONER TALESFORE: Right, that would work.

10 COMMISSIONER O'DONNELL: Do you have a time you'd  
11 like to recommend?

12 COMMISSIONER TALESFORE: Because we don't have  
13 any other restaurants with speakers, I would probably say  
14 just to eliminate them and maybe for special occasions  
15 until a certain time, I don't know. It's getting  
16 complicated now and we don't have precedence for this and  
17 I'd like to hear what other people think about that.

18 COMMISSIONER JENSEN: I wouldn't be willing to  
19 add that to the motion, because I think as Staff pointed  
20 out, there's a noise ordinance and they have to comply with  
21 the noise ordinance and they shouldn't be held to something  
22 greater than the noise ordinance.  
23  
24  
25

1 COMMISSIONER TALESFORE: How hard... I mean when  
2 you have a noise ordinance...

3 COMMISSIONER O'DONNELL: Wait a minute; this is  
4 the thing we're not supposed to do, because I get  
5 criticized all the time for it.

6 COMMISSIONER TALESFORE: Okay.

7 COMMISSIONER O'DONNELL: If you would go through  
8 the Chair. Now, you wanted to comment in response?

9 COMMISSIONER TALESFORE: I do, and I'd like to  
10 hear from Staff about this. I don't know another  
11 restaurant... This is a new one for the Planning Commission.  
12 We don't have outdoor speakers, I don't believe, in any  
13 other restaurant with outdoor dining, unless you want to  
14 clarify.

15 MARNI MOSELEY: I'm not aware of any.

16 COMMISSIONER O'DONNELL: We also don't have a  
17 regulation against it, so they could just go hang them up  
18 as I recall.

19 MARNI MOSELEY: That is correct.

20 COMMISSIONER TALESFORE: Okay, I didn't realize.  
21 I didn't know that.

22 COMMISSIONER O'DONNELL: Let me again suggest  
23 that I'm perfectly willing to take what the Applicant is  
24

1 saying, but I'm also agreeing with Commission Bourgeois  
2 that it runs with the land and therefore it isn't just the  
3 Applicant. On the other hand, the noise ordinance is all  
4 very well, but when you can't get police to show up and do  
5 something about it, it's not very helpful. If on the other  
6 hand one simply says the speakers go off at some hour,  
7 that's very easy to enforce, because it's either on or it  
8 isn't on, you don't have to measure decibels. So I would  
9 personally ask the maker of the motion if she would  
10 consider adding to her motion a time limit, and you can put  
11 whatever you want to, that the speakers should go off. If  
12 you don't want it too, fine, but I am worried about those  
13 speakers too.

14 COMMISSIONER JENSEN: At this point I think there  
15 have been so many comments and so many additions and  
16 subtractions made that I'm going to withdraw the motion and  
17 if someone can summarize it and if they want to put new  
18 recommendations, that's fine, but I'm going to withdraw the  
19 motion.

20 COMMISSIONER O'DONNELL: Well I will make the  
21 motion, and you have made the motion, which I happen to  
22 think was a good motion, and it also saves me repeating it,  
23 but as far as the conditions are concerned, the only  
24

1 additional comment we're talking about right now as far as  
2 I understand it is the speaker, and as the maker of the  
3 motion I would recommend that the Council impose a time  
4 limitation on the speakers such that they would not be on  
5 after 9:00pm in the evening, and I would ask whether the  
6 seconder of the motion... Well, is there a seconder to this  
7 motion?

8 COMMISSIONER MICCICHE: I'll second the motion.

9 COMMISSIONER O'DONNELL: So you'd accept the  
10 whole motion as made?

11 COMMISSIONER MICCICHE: Yeah, the 9:00 o'clock  
12 time may be a little early on weekends. I would say stop it  
13 with the liquor serving. I'm just suggesting.

14 COMMISSIONER O'DONNELL: Let me just throw this  
15 out for discussion. The neighbors, I assume they put up  
16 with too much, but I also agree with the comment that it's  
17 probably not going to be from these people. On the other  
18 hand, introduce loudspeakers that are quiet except when you  
19 turn them up, and I don't know why somebody would be hurt  
20 by having to turn their speakers off at 9:00 o'clock at  
21 night. Most of the nights around here when I want to sit  
22 outside anyway it's cold, so there are very few nights  
23 that... Maybe I'm getting carried away; maybe there are more  
24  
25

1 nights to a period than that. But I am suggesting 9:00,  
2 9:30, but in there, and I'm thinking of children and people  
3 trying to sit in their backyard, so you're right.

4 COMMISSIONER MICCICHE: I'll agree with it,  
5 whatever time you pick.

6 COMMISSIONER O'DONNELL: Okay. So we have a  
7 motion and second. Do we have further discussion? Yes,  
8 Commissioner Bourgeois.

9 COMMISSIONER BOURGEOIS: I'm not going to support  
10 the motion. I hearken back to comment that you made earlier  
11 that to make those findings for Cin-Cin those were very  
12 special circumstances, that's tucked away in Village Lane  
13 and not really exposed to any neighbors, and to have the  
14 same hours at this location, I do agree that there may be  
15 some compromise between 10:00pm and 1:00am, but I don't  
16 think 11:00 and midnight is that compromise, so I'm not  
17 going to support that motion.

18 COMMISSIONER O'DONNELL: Other comments?

19 COMMISSIONER TALESFORE: I have an issue with the  
20 weekend hour as well, but I especially have an issue with  
21 the limit of the speakers, because they will go with the  
22 land and if these people leave and it goes to someone else.  
23 It's just we're controlling the speakers and it's a new  
24  
25

1 concept here, and I know we have an ordinance for sound,  
2 but it's hard to enforce it. I may not be able to support  
3 this recommendation then unless we could eliminate the  
4 speakers, and I don't think I'm going to get that.

5 COMMISSIONER O'DONNELL: Any other comments?

6 Okay, I'm going to call the question. All those in favor of  
7 the motion, say aye. All those opposed? Carried 3-2.

8 Michael, you can come back.

9  
10 ORRY KORB: And there are no appeal rights  
11 related to this application and this action. Rather the  
12 Commission's decision is a recommendation to the Town  
13 Council. A hearing will be noticed before the Town Council  
14 on this application.



**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: August 27, 2008**

**ITEM NO.:** 6

PREPARED BY: Marni F. Moseley, Assistant Planner

APPLICATION NO: U-08-010

LOCATION: **330 North Santa Cruz Avenue** (East side of N. Santa Cruz Ave.  
North of Petticoat Lane)

APPLICANT: M.S.D. Restaurant Co. LLC

PROPERTY OWNER: Meldimar LLC

CONTACT PERSON: Richard Cole (408) 297-2587

**APPLICATION**

**SUMMARY:** Requesting approval to modify a conditional use permit to allow full liquor service with modified hours of operation on a property zoned C-2. APN: 529-04-053

DEEMED COMPLETE: July 24, 2008

FINAL DATE TO TAKE ACTION: January 24, 2009

**RECOMMENDATION:** Forward recommendation for approval to Town Council, subject to conditions.

**PROJECT DATA:** General Plan Designation: Central Business District  
Zoning Designation: C-2, Central Business District  
Applicable Plans & Standards: Town Alcohol Policy  
Restaurant Policy

Parcel Size: 2614

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Commercial	Central Business District	C-2
East	Commercial	Central Business District	C-2
South	Commercial	Central Business District	C-2
West	Commercial	Central Business District	C-2

**CEQA:** Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

- FINDINGS:
- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
  - As required by Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project that it meets the use set forth in the Town's General Plan.
  - As required by the Town Alcohol Policy.

ACTION: Recommendation to the Town Council

- EXHIBITS:
1. Location Map
  2. Required Findings (one page).
  3. Proposed Conditions of Approval (two pages)
  4. Resolution No. 2003-98
  5. Letter of Justification (three pages)
  6. Additional Letter from applicant (five pages)
  7. Town Alcohol Policy
  8. Floor plan (one page) received on June 23, 2008
  9. Photos of the site and surrounding area (five pages)

BACKGROUND:

The subject site is located on the east side of North Santa Cruz Avenue approximately 100 ft north of Petticoat Lane, and directly across from Almendra Avenue. The space was previously occupied by Transylvania restaurant. The current Conditional Use Permit (CUP) was approved by Town Council on September 2, 2003. The Use Permit established operating hours from 10:00 AM until 10:00 PM daily. It also allows alcohol service (beer and wine) in the small outdoor patio area at the front of the restaurant.

PROJECT DESCRIPTION:

The applicant is requesting approval to modify the existing CUP to allow full liquor service. The applicant is also requesting to extend the hours of operation to 11:00 PM Sunday thru Thursday and until 1:00 AM on Friday and Saturday.

ANALYSIS:

A. Alcohol Policy

The Town's Alcohol Policy requires any change in the service of alcoholic beverages to be approved by the Town Council. The request is consistent with the general policies in Section II and the specific policy in Section IV (see Exhibit 7). The restaurant is currently open until 10:00 PM daily; the applicant is requesting to extend the approved hours of

operation to 11:00 PM Sunday thru Thursday, and 1:00 AM Friday and Saturday. The Alcohol Policy requires an additional finding that the applicant has demonstrated a clear benefit to the community to approve alcohol service beyond 10:00 PM (Exhibit 7). The Planning Commission's recommendation will be forwarded to the Town Council for final action.

B. Traffic and Parking

There is no proposed change in use, therefore traffic and parking will not be impacted by this application.

C. CEQA Determination

It has been determined that this project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

CONCLUSION AND RECOMMENDATION:

A. Conclusion

The proposed modifications of the CUP comply with the regulations set forth for the C-2 zone and the Town's Alcohol Policy with the exception of the extended hours of operation. The issue of full liquor is an issue for the Planning Commission to consider.


B. Recommendation

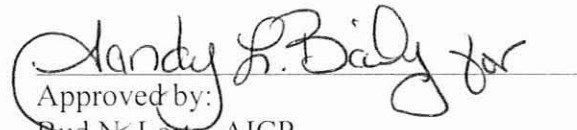
Staff recommends that the Planning Commission recommend approval of the Conditional Use Permit to the Town Council with the requested operating hours if the Commission can make the required findings to operate after 10:00 PM:

1. Find that the project is categorically exempt pursuant to Section 15301 of the State Environmental Guidelines;
2. Make the findings as required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit, subject to conditions (Exhibit 2); and
3. Determine that the proposed modifications are in compliance with the Town's Alcohol Policy (Exhibit 7). If the Commission can make the findings to allow service beyond 10:00 PM, condition 3 must be modified to reflect the change.

C. Alternatives

1. Recommend denial of the Conditional Use Permit.
2. Recommend approval of the CUP with modification to any of the following areas:
  - A. Beer and wine service to full liquor service;
  - B. Hours of operation

  
Prepared by:  
Marni F. Moseley CFM  
Assistant Planner

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

BNL:MM:mdc

cc: M.S.D. Restaurant Co. LLC, 330 North Santa Cruz Avenue, Los Gatos, CA 95030  
Meldimar LLC, 1401 Martin Ave, Santa Clara, Ca 95050



## 330 N. Santa Cruz Avenue





## **REQUIRED FINDINGS FOR**

**330 North Santa Cruz Avenue**  
**Conditional Use Permit U-08-010**

**Requesting approval to modify a conditional use permit to allow full liquor service with modified hours of operation on a property zoned C-2. APN: 529-04-053**

**PROPERTY OWNER: Meldimar LLC**  
**APPLICANT: M.S.D. Restaurant Co. LLC**

- 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 Categorically Exempt.

N:\DEV\FINDINGS\330 NSC.wpd



**RECOMMENDED CONDITIONS OF APPROVAL FOR:**

**330 North Santa Cruz Avenue**  
**Conditional Use Permit U-08-010**

**Requesting approval to modify a conditional use permit to allow full liquor service with modified hours of operation on a property zoned C-2. APN: 529-04-053**

**PROPERTY OWNER: Meldimar LLC**  
**APPLICANT: M.S.D. Restaurant Co. LLC**

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

1. **APPROVAL:** This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as received by the Town on June 23, 2008. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. **EXPIRATION OF APPROVAL:** The Conditional Use Permit will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. **HOURS OF OPERATION.** Hours of operation shall not exceed 10:00 am to 10:00 pm.
4. **SEATING.** A maximum of thirty two (32) seats are allowed inclusive of indoor and outdoor dining areas. A maximum of eight seats may be placed in the outdoor dining area.
5. **OUTDOOR DINING AREA.** The outdoor dining area shall be maintained and kept litter free.
6. **OUTDOOR DINING BARRIER.** The barrier around the outdoor dining area shall remain, to provide clear delineation of the eating area, and to provide adequate separation from the adjacent public areas. The final design of the barrier shall be approved by the Director of Community Development, Consulting Architect and the Police Chief, prior to issuance of any building permits.
7. **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.
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. **LIVE ENTERTAINMENT.** No live entertainment shall be provided unless the applicant receives future approval of live entertainment.
11. **LAPSE FOR DISCONTINUANCE.** If the activity for which the Conditional Use

August 27, 2008

Permit has been granted is discontinued for a period of one (1) year, the approval lapses pursuant to Section 29.20.340 of the Zoning Ordinance.

12. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

13. 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.
14. 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.
15. 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.
16. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
17. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

RESOLUTION 2003 -98

RESOLUTION OF THE TOWN OF LOS GATOS APPROVING REQUEST TO MODIFY A CONDITIONAL  
USE PERMIT TO INCREASE THE HOURS OF OPERATION AND TO MODIFY TERMS OF SERVICE OF  
ALCOHOLIC BEVERAGES FOR A RESTAURANT ON PROPERTY ZONED C-2

CONDITIONAL USE PERMIT APPLICATION: U-03-4  
PROPERTY LOCATION: 330 N. SANTA CRUZ AVENUE  
PROPERTY OWNER: MELIDIMAR, LLC  
APPLICANT: CAROL HENNESSY AND SIMONA TODORAN.

**WHEREAS:**

A. This matter came before Council for public hearing on August 4, 2003, on a request from the applicant and was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the 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 July 28, 2003 along with subsequent reports and materials prepared concerning this application.

C. The current restaurant occupying the tenant space the subject use permit applies to is moving out of Town in August. Applicant is requesting approval to modify the Conditional Use Permit to extend the evening hours of operation to 10:00 p.m. seven days a week, and to serve beer and wine to patrons sitting in the outdoor dining area. The outside seating area (eight seats) would be used when weather permits and are included in the total number of seats (32) allowed for the restaurant.

D. The Planning Commission considered this matter on May 14, 2003 and forwarded it to Council with a recommendation for approval due to the uniqueness of the situation, which is not addressed in the Town's Alcohol Beverage policy.

E. Council finds as follows:

1. The project is categorically exempt pursuant to State Environmental Guidelines section 15301 as adopted by the Town.
2. The change in hours is consistent with the Redevelopment Plan for the central Los Gatos Redevelopment Project (section IV.B).

3. Pursuant to Town Code section 29.20.190, the proposed use of the property is desirable to the public convenience; will not impair the integrity and character of the zone; would not be detrimental to public health, safety or general welfare; and is in harmony with the various elements or objectives of the general plan and purposes of the Town Code.

RESOLVED:

1. The request to modify Conditional Use Permit U-03-4 is granted.
2. The revised Conditions of Approval, attached hereto as Exhibit A, are applied to this Application.
3. 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 or federal law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California held on the 2<sup>nd</sup> day of September, 2003 by the following vote.

COUNCIL MEMBERS:


AYES: Steve glickman, Diane McNutt, Joe Pirzynski, Mike Wasserman,  
Mayor Sandy Decker.

NAYS: None


ABSENT: None

ABSTAIN: None

SIGNED:

  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST

  
CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA



PLANNING COMMISSION  
RECOMMENDED CONDITIONS OF APPROVAL

330 N. Santa Cruz Ave  
Conditional Use Permit U-03-4

Requesting approval to modify a conditional use permit to increase the hours of operation and to modify terms of service of alcoholic beverages for a restaurant on property zoned C-2. APN 529-04-040

PROPERTY OWNER: Melidimar, LLC

APPLICANT: Carol Hennessy and Simona Todoran

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved and noted as received by the Town on May 5, 2003. Any changes or modifications to the approved plans and/or business operation shall be approved by the Community Development Director or the Planning Commission, depending on the scope of the changes.
2. EXPIRATION OF APPROVAL: The Conditional Use Permit will expire two years from the date of approval unless it is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. HOURS OF OPERATION. Hours of operation shall not exceed 10:00 am to 10:00 pm.
4. SEATING. A maximum of thirty two (32) seats are allowed inclusive of indoor and outdoor dining areas. A maximum of eight seats may be placed in the outdoor dining area.
5. OUTDOOR DINING AREA. The outdoor dining area shall be maintained and kept litter free. Signage, lighting and furniture shall be designed to maintain the architectural integrity of the building.
6. OUTDOOR DINING BARRIER. The barrier around the outdoor dining area shall be modified to provide clear delineation of the eating area, and to provide adequate separation from the adjacent public areas. The final design of the barrier shall be approved by the Director of Community Development, Consulting Architect and the Police Chief, prior to issuance of any building permits.
7. ALCOHOL SERVICE. The service of alcohol shall be limited to beer and wine and may only be served with meals.
8. RETAIL SALES. The use shall include retail sales in conjunction with the restaurant.
9. TAKE OUT. Take out food shall be served in recycled material containers.
10. UTENSILS. All beverages and food served on site shall be served on reusable materials.
11. LIVE ENTERTAINMENT. No live entertainment shall be provided unless the applicant receives future approval of live entertainment.
12. LAPSE FOR DISCONTINUANCE. If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year, the approval lapses pursuant to Section 29.20.340 of the Zoning Ordinance.
13. ROOF MOUNTED EQUIPMENT. Any roof mounted equipment shall be fully screened.

TO THE SATISFACTION OF THE POLICE CHIEF:

- 14 ALCOHOL SALES. If it is determined that the sale of alcohol is a nuisance, the use permit shall be subject to reevaluation by the Planning Commission.
15. EMPLOYEE TRAINING: The establishment shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
16. DESIGNATED DRIVER PROGRAM: The establishment shall have and actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
- 17 TAXI NUMBERS: Taxicab telephone numbers shall be posted at a visible location.

N:\SHARE\Adopted Reso-Ord\Transilvania-Cafe.RES.wpd

## **LIQUOR LICENSE SERVICES, LTD.**

A DIVISION OF COLE & COWAN, INC.

A CALIFORNIA LICENSED REAL ESTATE BROKER

**LIQUOR LICENSED BUSINESS CONSULTANTS**

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1060 Minnesota Avenue

San Jose, California

408-297-2587

Fax 408-999-0784

e-mail: [rickcole@pacbell.net](mailto:rickcole@pacbell.net)

**3 PAGES INCLUDING THIS COVERSHEET**

VIA FACSIMILE

July 25, 2008

ATT: MARNI MOSELEY, CFM

RE: CHICAGO STEAK & FISH RESTAURANT  
330 N. SANTA CRUZ AVE., LOS GATOS

PURSUANT TO OUR TELEPHONE CONVERSATION TODAY,  
TRANSMITTED IS THE REVISED LETTER

IF YOU HAVE ANY QUESTIONS, PLEASE CALL. THANK YOU.

SINCERELY,

RICK COLE

Letter to Town of Los Gatos

re: Chicago Steak & Fish liquor license

Community Development Department

Town of Los Gatos

110 East Main Street

Los Gatos, California 95032

July 25, 2008

We are writing to you in regard to the new restaurant our family is opening here in Los Gatos. It will be called Chicago Steak & Fish and is located at 330 North Santa Cruz Avenue at the site of the former Transylvania restaurant. Many years ago, our family moved to this area from Chicago. It has been our goal to one day open a friendly, intimate and affordable restaurant here similar to the ones we loved as we were growing up in the neighborhoods of Chicago.

ABOUT US:

This will be the second restaurant our family will operate in on North Santa Cruz Boulevard. For some 16 years my brother Pete Jillo and other members of our family have owned and operated Gardino Fresco, located just north of the Los Gatos Theater. We are proud that we have earned an excellent reputation for serving local residents and for contributing to the betterment of our community thru our support of local charities and local youth groups.

Gardino's is the sort of restaurant that has a great following of local residents, many of whom eat in our restaurant several times a month. In all the years Gardino's has been open, there has not been a single time the police have been summoned - indeed, there has never been an incident or problem of any sort.

This is exactly the way we plan on operating our new Chicago Steak & Fish restaurant. We plan on building a strong local following with a continued commitment to be long term contributors to the town.

My husband, Michael Machado, is the Dean at Valley Christian High School. He is a career educator and administrator. He has also served as head football coach for the past 12 years. Prior to that, he served in a similar capacity at Saratoga High School for 12 years. He holds a bachelor's degree in public administration from the University of San Francisco and a state teaching credential.

For the past 14 years, I have served as a corporate finance director after receiving my bachelor's degree in the administration of justice from San Jose State University. I left the corporate world several months ago to pursue our dream of operating a small business here in Los Gatos; and I am most excited about this new phase my life and career will enter.

OUR REQUEST:

We respectfully request that the Town of Los Gatos grant an upgrade to us to a Type 47 Liquor License to serve with meals in our new restaurant, and to allow us hours to the maximum Los Gatos permits.

Open Sunday till through Thursday from 10 am to 11:00 pm with alcohol served with meals to 11:00 pm · Open Friday and Saturday 10:00 am to 1:00 am with alcohol served only with meals to 1:00 am.

We are planning to keep the same number of seats - 32. We want to strongly emphasize that we do plan on running a restaurant, not a bar. We will not have a separate bar area; and liquor will be served before, during and after normal dining.

Thank you for your consideration.

Soseek Machado Partner

Chicago Steak & Fish

330 North Santa Cruz Avenue

Los Gatos, California 95030 408.393.5950



August 5, 2008

Marni F. Moseley CFM

Town of Los Gatos

Assistant Planner

Re: Chicago Steak and Fish

Dear Ms. Moseley,

Please include this letter in those materials to be included in the staff report on this application.

This letter addresses those issues related to the issuance of a conditional use permit which allows for the service of alcoholic beverages after 10 PM.

Although this may be somewhat repetitive of other materials submitted on behalf of the applicant, it is important to focus on the central theme of Chicago Steak and Fish – it is first and foremost to be a restaurant providing excellent food service to Los Gatos and its visitors. This primary goal needs to be supported by the ability to serve and sell alcoholic beverages after 10 PM.

Will late night service adversely impact the adjacent residential neighborhoods? We believe that there will be no adverse impact on these neighborhoods. The orientation of the restaurant is removed from adjacent residential neighborhoods. The restaurant is also near to the location of the Baker's Square restaurant, which is now closed. So, the addition of this restaurant with late night service, in the location of a former restaurant, will not negatively impact adjacent neighborhoods.

Does the applicant have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy? There is no such history. This applicant's family has owned and operated Gardino Fresco on North Santa Cruz Avenue for 16 years. During that time, there have been no complaints or acts of non-compliance with the Alcoholic Beverage Policy. This applicant has the benefit of that knowledge, experience and support in operating this restaurant in full compliance with all ordinances, regulations and policies.

Chicago Steak and Fish will offer a clear benefit to the community by providing late night food and beverage service. There are a number of persons in Los Gatos who would seek out the food service provided by Chicago Steak and Fish, including employees of other establishments who get off of work at 10 PM and visitors to the area desiring a late night meal. The menu offerings of our restaurant will be more affordable than other restaurants in the immediate area.

Ms. Marni Moseley

August 5, 2008

Page 2

Additionally, this late night service will also allow patrons of Chicago Steak and Fish to continue to be served alcoholic beverages when they have stayed beyond the 10 PM cutoff.

Thank you for your consideration.

Soseek Machado, Partner

330 North Santa Cruz Avenue

Los Gatos, California 95030      408.393.5950



Recap of Comments in Support of Amendment to the Conditional Use Permit

- 1) Looking forward to good times! (San Jose)
- 2) Wow! Great news. Will check it out! (Los Gatos)
- 3) Every time I visit Gardino's when I'm in town, have a great experience! I look forward to eating and drinking a cocktail at the new steakhouse (Los Gatos)
- 4) Forbes Mill has one, Why not Chicago? (Los Gatos)
- 5) Ability to stay competent with other restraints. (Los Gatos)
- 6) I'm looking forward to trying the new restaurant. (Los Gatos)
- 7) Liquor is OK! (Los Gatos)
- 8) We need another steak house. (Los Gatos)
- 9) Drink Up! (Los Gatos)
- 10) I strongly support a fair playing field for Machado and Pete (Los Gatos)
- 11) I support Soseek & Pete and am confident in their ability to responsibly run a restaurant with a full liquor licence! (Los Gatos)
- 12) We need another food place to enjoy wine and dinner. (Los Gatos)
- 13) I like Martini with my steak (Los Gatos)
- 14) Cocktails would enhance the restaurant. (Los Gatos)
- 15) What's a steakhouse without cocktails? (San Jose)
- 16) A great family. (Los Gatos)
- 17) It will be a Well run restraint. (Los Gatos)
- 18) This town needs more reasonably priced and family oriented steak and fish restraint. (Los Gatos)
- 19) Great addition to the town! (Los Gatos)
- 20) Give them an upgrade we need the competition. (Los Gatos)
- 21) Having upgraded liquor license will provide a much needed boost to the slipping Los Gatos economy. (Santa Clara)
- 22) We need a good steak house. (Los Gatos)
- 23) Please support those who bring great food, culture, environment and service together! (Los Gatos)
- 24) These are quality people with great food and honesty. (Los Gatos)
- 25) These are great restauranteers. They ran a good business. (Los Gatos)
- 26) Very delivering business. (Los Gatos)
- 27) Invite us to the grand opening! (Los Gatos)
- 28) Great food! (San Jose)
- 29) We need another place to drink and dine. (Los Gatos)
- 30) Great idea for a new restraint in Los Gatos (Saratoga)
- 31) Yum! (Danville)
- 32) Very good food. Wish you guys the best of luck! (Santa Cruz)
- 33) Give it to em! (Watsonville)
- 34) A great addition to Los Gatos. (Los Gatos)
- 35) Please proceed with license We need another affordable steak house in town (Los Gatos)

RECEIVED

JUN 23 2008

TOWN OF LOS GATOS  
PLANNING DEPARTMENT

PETITIONS IN  
SUPPORT OF LIQUOR  
LICENSE UPGRADE

CHICAGO STEAK & FISH  
330. N SANTA CRUZ AVE  
LOS GATOS, CA 95030

- 36) Please proceed with license would love to have a martini with my adult dinner (Los Gatos)
- 37) We need (desperately) a good fair priced steakhouse in town! (Los Gatos)
- 38) Positive contributor provides for our town. (Los Gatos)
- 39) Very responsible + always provide excellent service. (Los Gatos)
- 40) Great and Responsible people.
- 41) Excellent service + quality on a consistent basis. (Los Gatos)
- 42) Responsible community members + it would be a great addition to the town. (Los Gatos)
- 43) Much needed in Los Gatos affordable steak and libation. (Los Gatos)
- 44) I love There other restraint. (Los Gatos)
- 45) We needed another steak house. (San Jose)
- 46) Will be much better than the other steak house. (San Jose)
- 47) Excellent food, Great service asset to Los Gatos. (Los Gatos)

RECEIVED

JUN 23 2008

TOP SECRET FRODOG-3

Sample: 48 copies signed on file in CDD

RECEIVED

JUN 23 2008

TOWN OF LOS GATOS  
PLANNING DEPARTMENT

**PETITION OF SUPPORT**  
**Liquor license upgrade**  
**For Chicago Steak & Fish Restaurant**

**PRESENTED TO THE LOS GATOS TOWN COUNCIL**

Soseek Machado and her husband Michael, with the help of their brother Pete Jillo and other family members, plan on opening and operating Chicago Steak & Fish at 330 North Santa Cruz Avenue in downtown Los Gatos.

We support their request for an upgraded liquor license that will enable them to serve cocktails with meals at their new restaurant.

Respectfully submitted,

Name: Naveen Baral

Address: 1008 Camino Ricardo 95116 SJCA

Comments  
(optional): Looking forward to good times!

Name: Cathy + Don Pereyra

Address: 17430 Phillips Ave Los Gatos 95030

Comments  
(optional): Wow! great news. Will cheer it out!



## POLICY REGULATING THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES

### I. Purpose

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

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

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

### II. General policy

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

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

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

### **III. Specific Policy**

1. Restaurants:

Alcoholic beverages may only be served with meals.

2. Restaurants With Separate Bars:

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

### **IV. Review Process**

1. Proposals for new bars or restaurants with bars and all requests for new alcohol service or a change to existing service shall be reviewed by the Planning Commission. The Commission will make a recommendation to the Town Council and the Council shall have final review authority.
2. Changes in ownership for businesses involving service of alcoholic beverages shall be reviewed by the Community Development Department. The following process will be followed:
  - a. The Director of Community Development shall contact the new business owner to make them aware of the conditions of approval attached to the Use Permit for the location.
  - b. One year following issuance of a business license, surrounding/impacted property owners shall be notified and any comments regarding the operation of the business shall be solicited.
  - c. If the Director of Community Development becomes aware of any alcohol related impacts on the surrounding neighborhood, the Director shall review the operation of the business to determine whether there is a violation of the use permit.

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

#### **IV. Enforcement**

All conditional use permits issued to establishments for alcoholic beverage service on-site shall be subject to Section 29.20.318(b) of the Town Code authorizing the Town Manager to take enforcement action if it is determined that the sale of alcohol has become a nuisance to the Town's public health, safety or welfare. Enforcement of section 29.20.318(b) of the Town Code will be based on, but not limited to, the following factors:

- I. The number and types of calls for service at or near the establishment that are a direct result of patrons actions;
- II. The number of complaints received from residents and other citizens concerning the operation of an establishment;
- III. The number of arrests for alcohol, drug, disturbing the peace, fighting and public nuisance violations associated with an establishment;
- IV. The number and kinds of complaints received from the State Alcoholic Beverage Control office and the County Health Department;
- V. Violation of conditions of approval related to alcoholic beverage service.

The Alcoholic Beverage Policy is not to be construed to be a right of development. The Town retains the right of review and approval (or denial) of each project based on its merits.



Chicago Steak & Fish  
330 N. Santa Cruz Ave.  
Los Gatos, Ca 95030

PROPOSED FLOOR PLAN

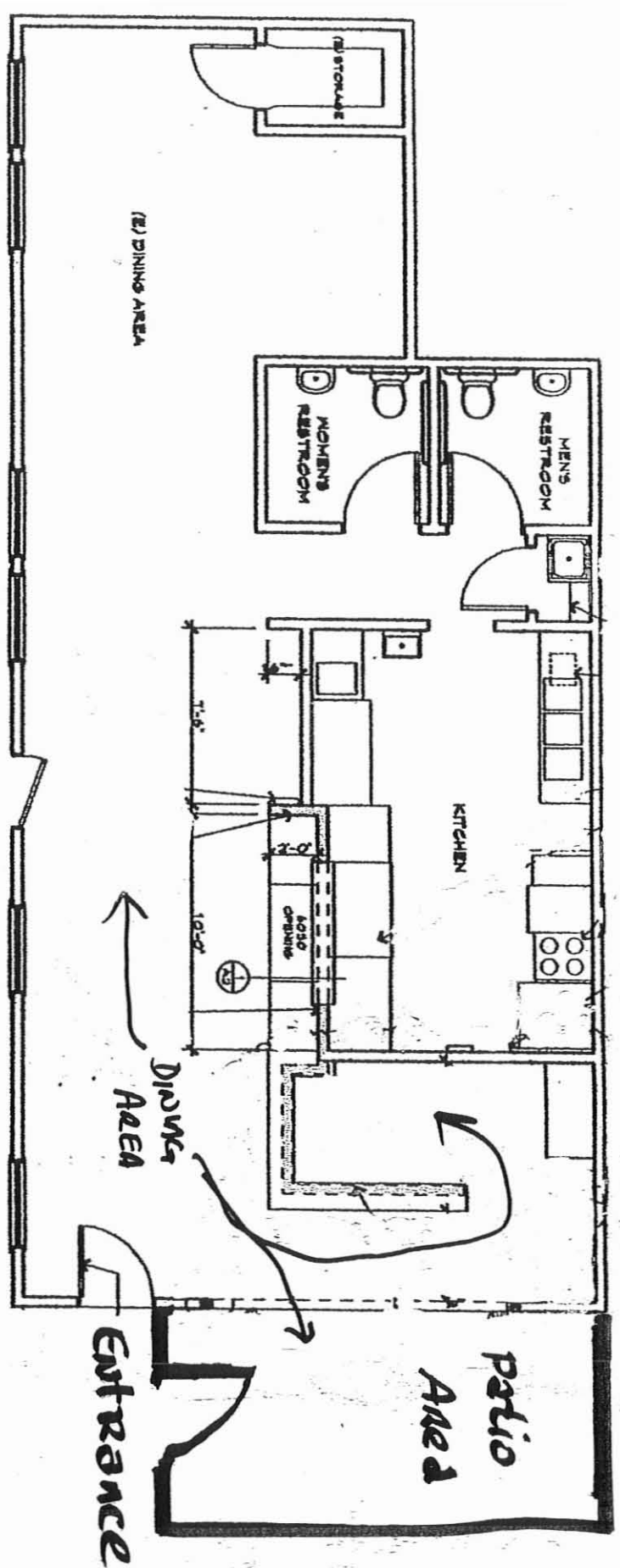
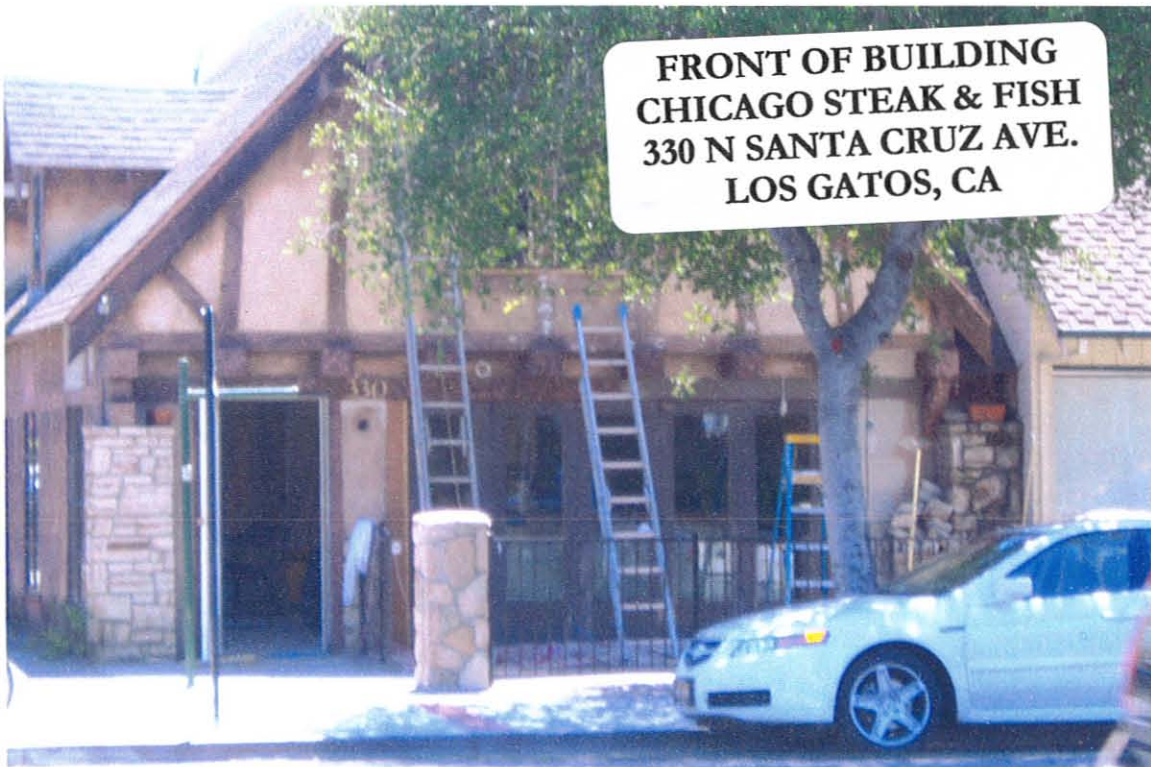
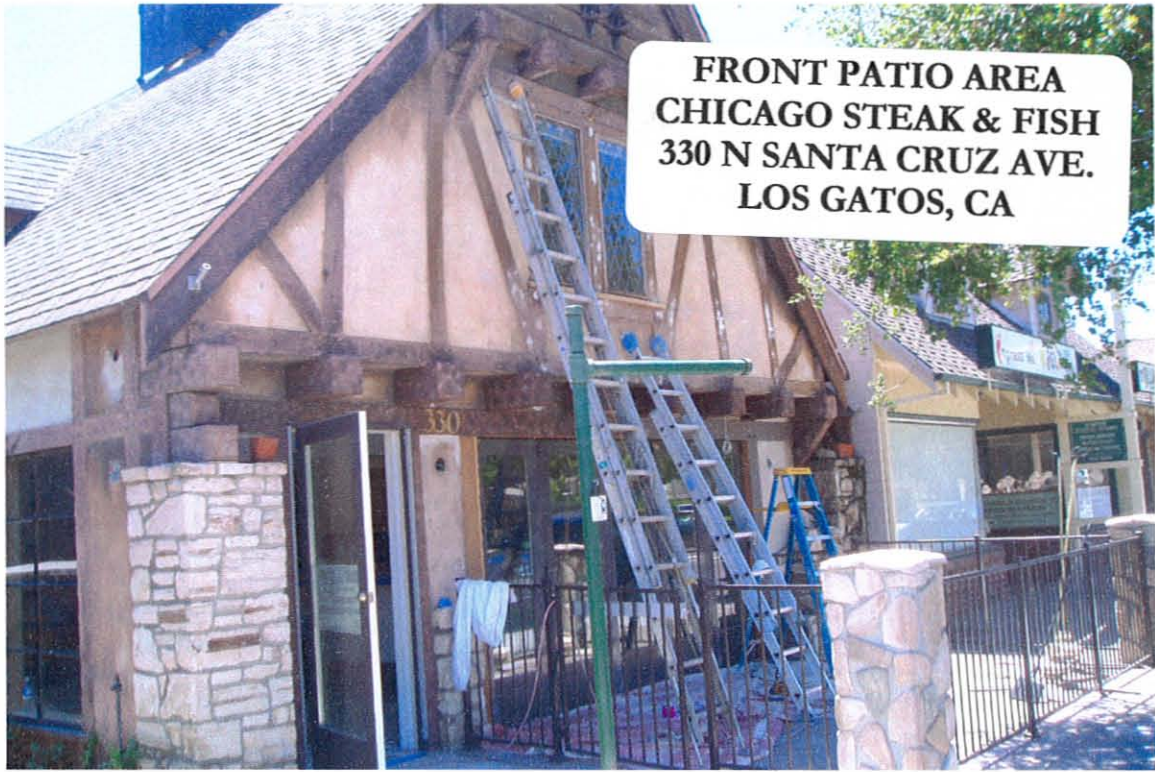


EXHIBIT 8

330 N SANTA CRUZ AVE  
LOS GATOS, CA



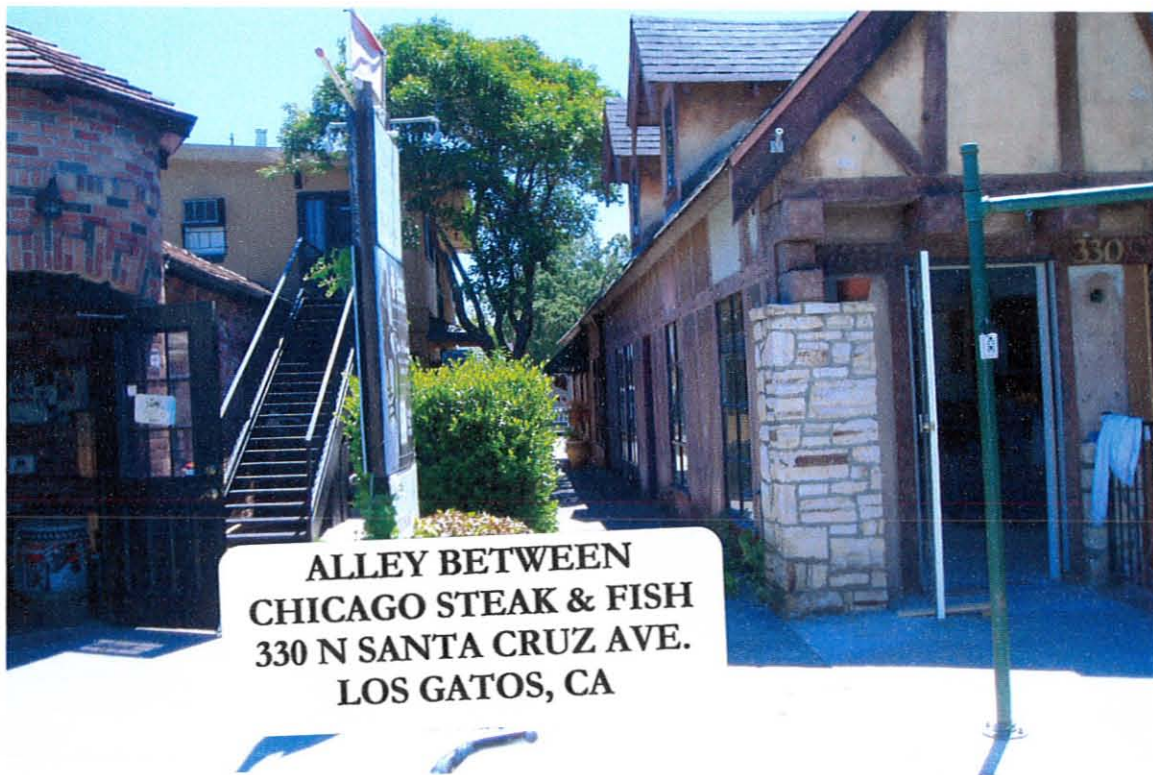
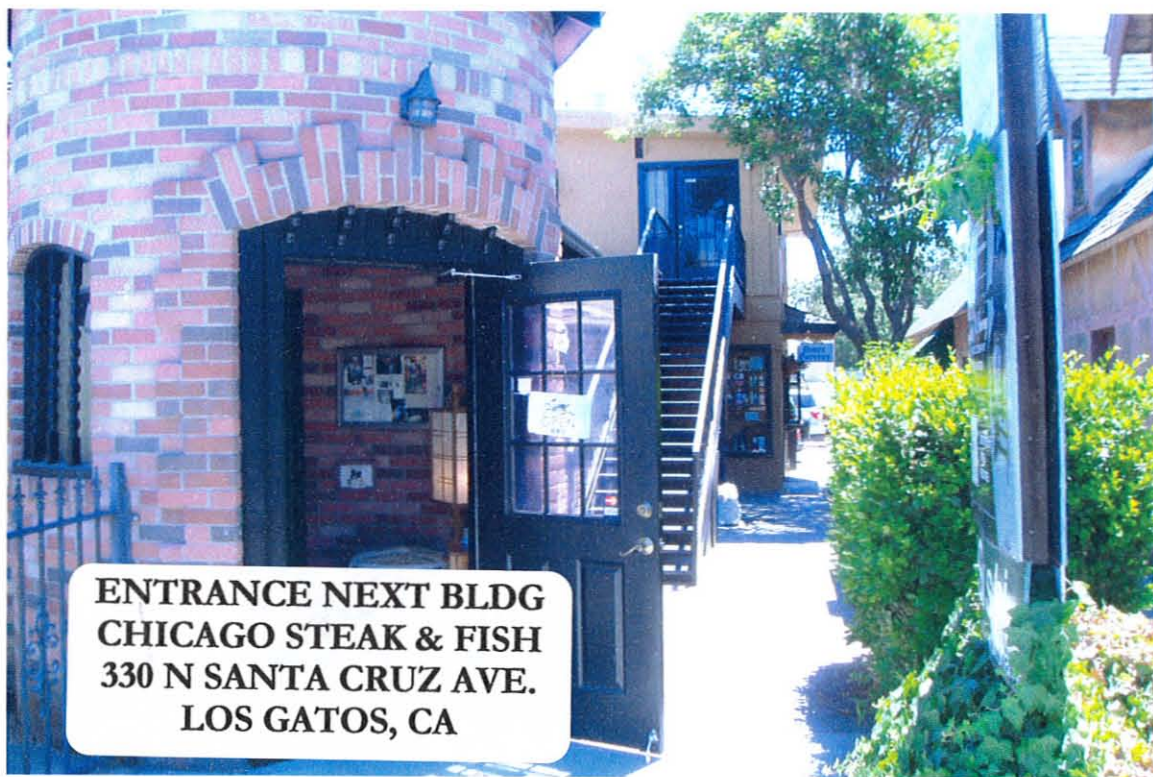


1. The first part of the report discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the company's financial health and for providing reliable information to stakeholders. The report also highlights the need for transparency and accountability in all financial dealings.

2. The second part of the report focuses on the implementation of internal controls. It outlines the various measures that should be put in place to prevent fraud and ensure the integrity of the financial data. This includes the establishment of a strong internal audit function and the regular review of financial statements.

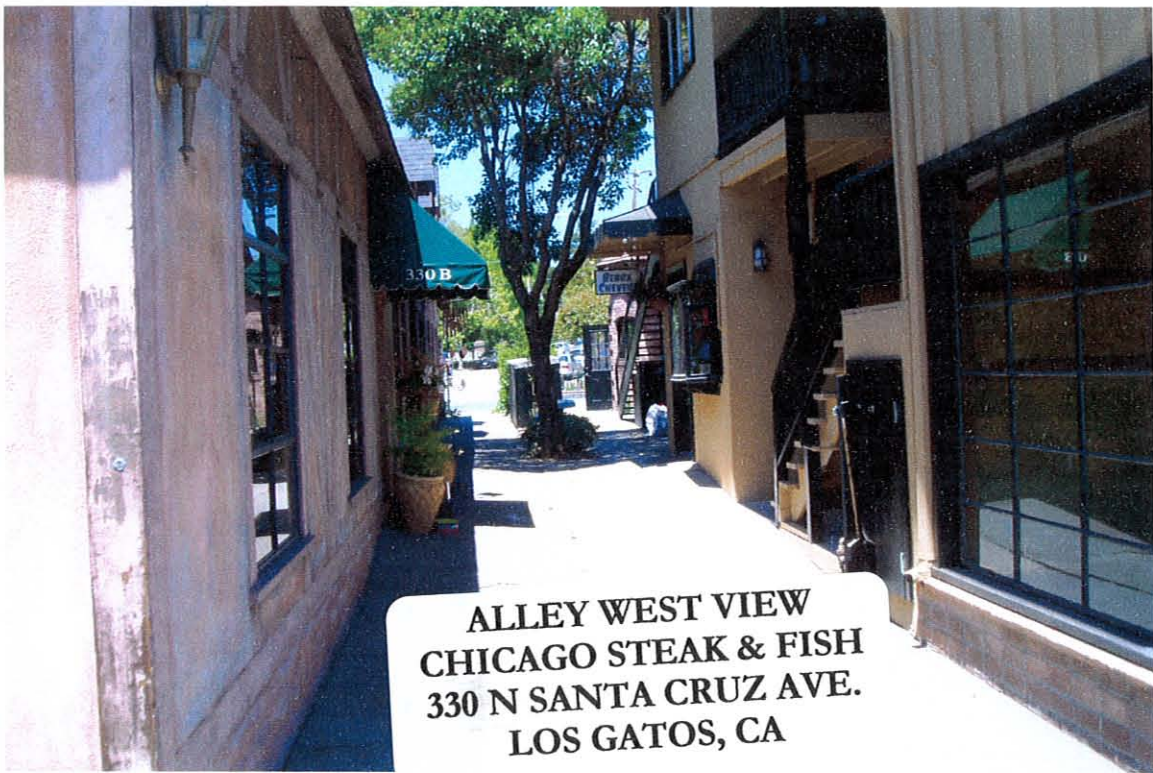
3. The third part of the report discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the company's financial health and for providing reliable information to stakeholders. The report also highlights the need for transparency and accountability in all financial dealings.





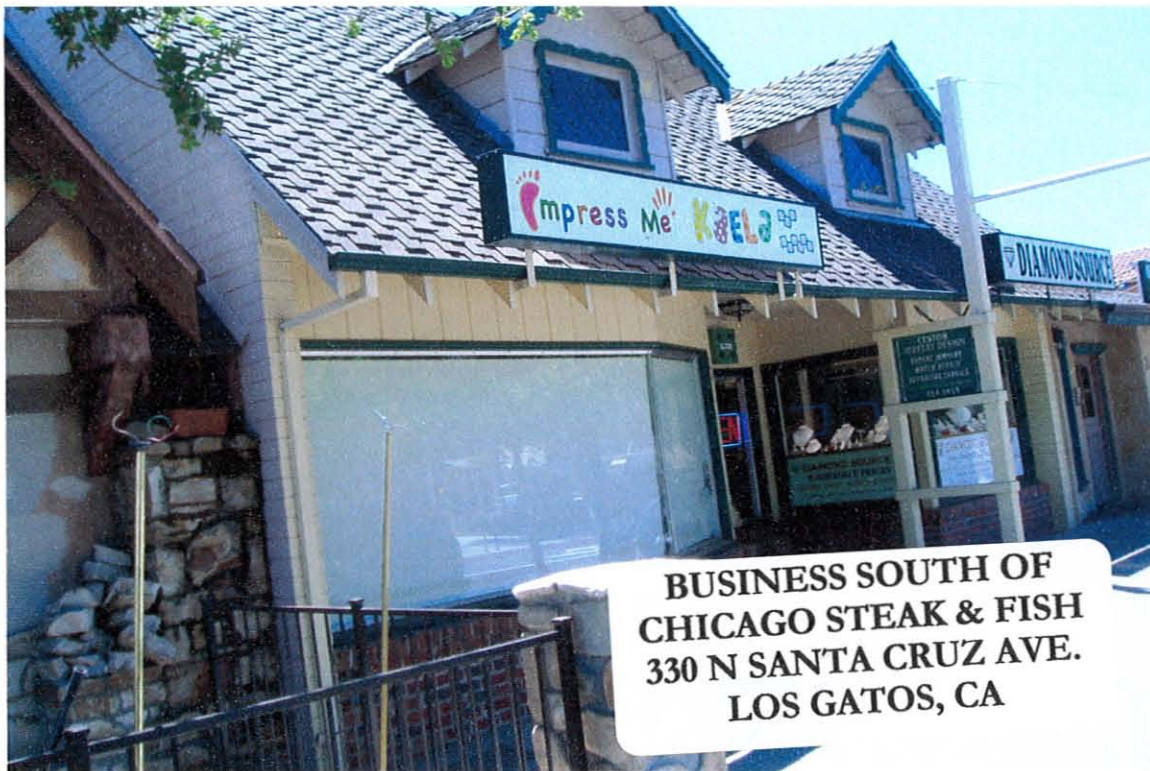












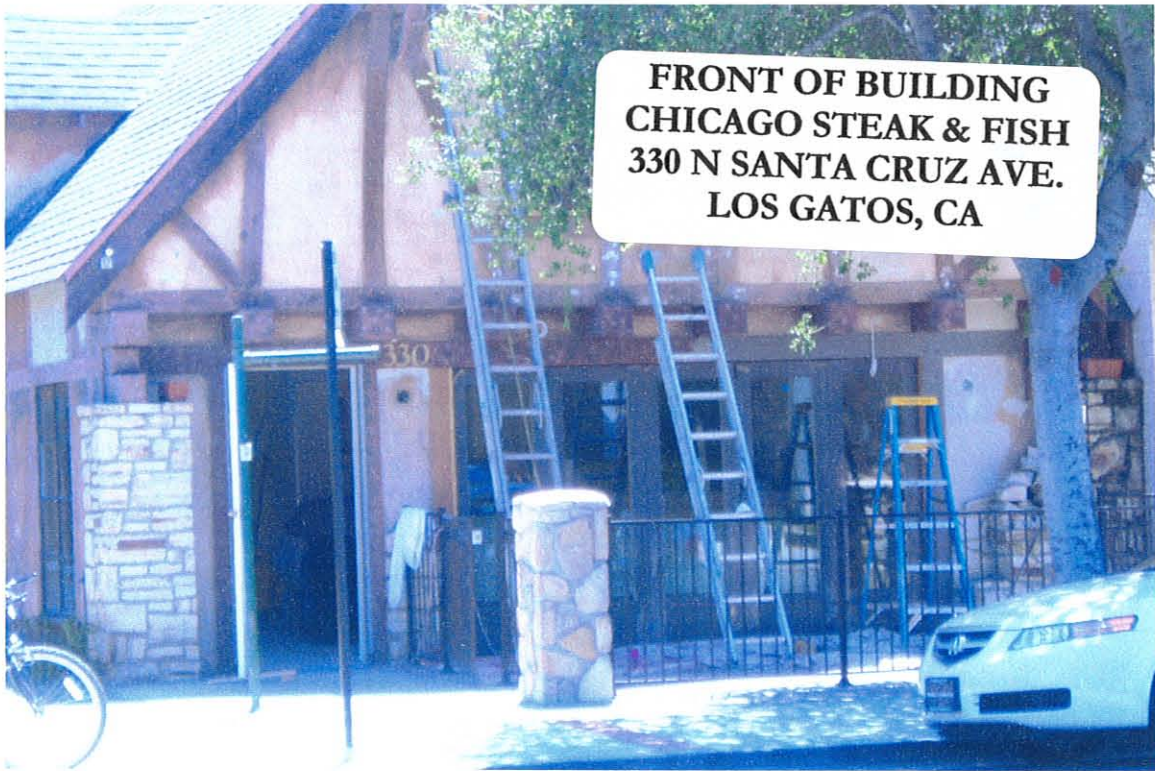
**BUSINESS SOUTH OF  
CHICAGO STEAK & FISH  
330 N SANTA CRUZ AVE.  
LOS GATOS, CA**



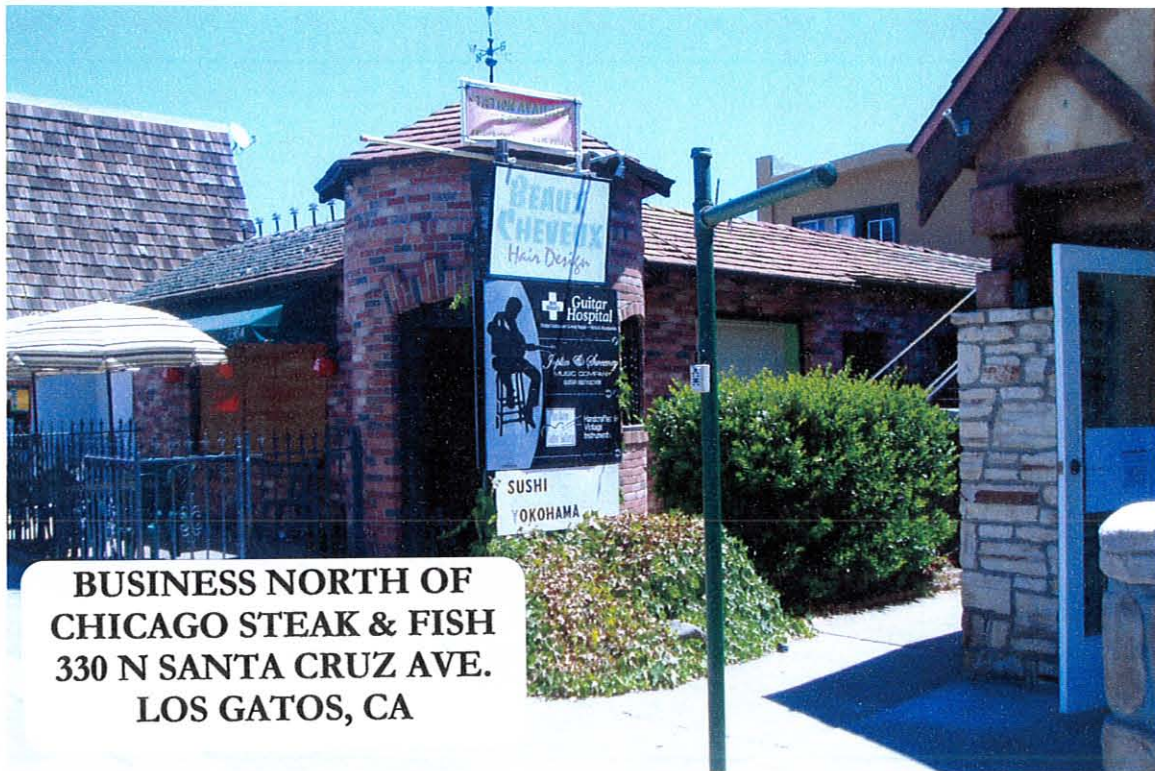
**SIGN OF BUSINESS SOUTH  
CHICAGO STEAK & FISH  
330 N SANTA CRUZ AVE.  
LOS GATOS, CA**







**FRONT OF BUILDING  
CHICAGO STEAK & FISH  
330 N SANTA CRUZ AVE.  
LOS GATOS, CA**



**BUSINESS NORTH OF  
CHICAGO STEAK & FISH  
330 N SANTA CRUZ AVE.  
LOS GATOS, CA**





**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: September 10, 2008**

**ITEM NO.: 1**

PREPARED BY: Marni F. Moseley, Assistant Planner

APPLICATION NO: U-08-010

LOCATION: **330 North Santa Cruz Avenue** (East side of N. Santa Cruz Ave.  
North of Petticoat Lane)

APPLICANT: M.S.D. Restaurant Co. LLC

PROPERTY OWNER: Meldimar LLC

CONTACT PERSON: Richard Cole (408) 297-2587

**APPLICATION  
SUMMARY:**


Requesting approval to modify a conditional use permit to allow full liquor service with modified hours of operation on a property zoned C-2. APN: 529-04-053

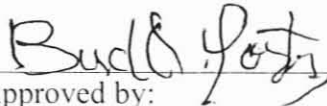
DEEMED COMPLETE: July 24, 2008  
FINAL DATE TO TAKE ACTION: January 24, 2009

EXHIBITS: 1-9. Previously received  
10. Letter from neighbors (one page) received at August 27, 2008 Planning Commission meeting.

**DISCUSSION:**

This item was continued to this agenda as there was not enough time to hear the application at the August 27, 2008 meeting. A letter from the neighbors was received by staff during the Planning Commission meeting on August 27, 2008. This letter was forwarded to the applicant and is attached as Exhibit 10.

  
Prepared by:  
Marni F. Moseley CFM  
Assistant Planner

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

BNL:MM:mdc

cc: M.S.D. Restaurant Co. LLC, 330 North Santa Cruz Avenue, Los Gatos, CA 95030  
Meldimar LLC, 1401 Martin Ave, Santa Clara, Ca 95050

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Matt and Keni DiLicco 238 Almendra Ave  
- Jenna Ryan 242 ALMENDRA Ave  
To the Los Gatos Planning Commission:

We, the residents of Almendra Avenue, wish to protest the proposal by 330 N. Santa Cruz Avenue (Chicago Fish and Steak) to extend its hours of operation at night until 11:00 p.m. from Sunday through Thursday and until 1:00 a.m. Friday and Saturday.

Almendra Avenue is a mostly residential area, with many small children. Chicago Fish and Steak, although on Santa Cruz Avenue, is directly at the end of Almendra Avenue. The Almond Grove area is a desirable area for families because it is safe and pleasant for children. While we want to see the businesses on Santa Cruz Avenue succeed, we feel that the business should seek to maintain the quality of life of the residents. We feel that this request by Chicago Fish and Steak would harm that quality of life in these ways:

### Parking

There is limited monitoring of parking on Almendra. Although parking is not allowed on our street after 6:30 p.m., we've had many issues with cars remaining on our street until late at night, due to limited parking patrols. With the restaurants' increased hours, this would be an even greater problem. This would limit the parking available to residents of the street, who have paid for permits to park in front of their own houses. Also, the people returning to their cars late at night can be noisy and disrespectful to sleeping residents.

### Issues with current eating/alcohol establishments

Another local eating and alcohol serving establishment is open until 2:00 a.m. on Bachman Avenue. Despite a very responsive attitude from the owner, the residents of Almendra have experienced:

- Noise keeping residents awake
- Disposing of bottles (sounds of breaking glass) in the early hours of the morning
- Patrons leaving the establishment intoxicated, yelling obscenities as they return to their cars, which often wake children up
- The police not able to monitor disturbances unless phoned by a resident

We aren't seeking to prevent Chicago Fish and Steak from serving alcohol, merely to limit its hours of operation.

beer & wine

Thank you.

Juan Nee 227 ALMENDRA  
Christine Southard 231 Almendra  
Chris 230 ALMENDRA AVE  
Michael 253 ALMENDRA AVE.  
Dale 259 ALMENDRA AVE  
James 301 Almendra Ave  
Up Kaschub 320 Massol Ave. 230 Almendra  
Sharon Joseph Beck 237 ALMENDRA  
Michael Taloff 317 Almendra  
Cardice Malebranche 245 Almendra  
Terry McElroy 214 Almendra Ave





Address:	Restaurant	Last Cup reviewed	Closing Sun-Thurs	Closing Fri-Sat	note:
206 N. Santa Cruz Ave	Forbes Mill	2003	10:00 PM	11:00 PM	*
50 University Ave, St 180	Wine Cellar	2002	2:00 AM	2:00 AM	*
11 College Ave	Tapestry	2004	11:00 PM	11:00 PM	*
15 1/2 N. Santa Cruz Ave	Los Gatos Bar and Grill/180	2002	11:00 PM	1:00 AM	*
130 N. Santa Cruz Ave St. G	Los Gatos Brewing Co.	2004	11:00 PM	1:00 AM	*
368 Village Lane	Cin Cin	2008	11:00 PM	12:00 PM	will be reviewed in March 09
330 N. Santa Cruz	Transylvania	2003	10:00 PM	10:00 PM	*
101-111 W. Main St	Los Gatos Roasting Co.	2006	10:00 PM	10:00 PM	Wine bar closes at 9:30 PM
217 N. Santa Cruz Ave	Thai Riffic	2003	10:00 PM	12:00 AM	No alcohol after 10 PM
20 S. Santa Cruz Ave, St. 200	Main Street Burgers	2007	10:00 PM	10:00 PM	
27 N. Santa Cruz Ave	Vittoria	2007	11:00 PM	11:00 PM	*
25 E. Main St.	I Gatti	2007	11:00 PM	11:00 PM	*
303 N. Santa Cruz Ave	James Randall	2006	10:00 PM	10:00 PM	
21 N. Santa Cruz Ave	Andale	2007	10:00 PM	10:00 PM	*
210 E. Main St.	Dio Deko	2003	11:00 PM	12:00 AM	*
31 University Ave	Steamer's Grillhouse	1994	2:00 AM	2:00 AM	*
320 Village Ln	Manressa	2000	11:00 PM	11:00 PM	*
50 University Ave, St 260	California Café	1998	2:00 AM	2:00 AM	*
15 North Santa Cruz Ave	Mountain Charlie's	1994	2:00 AM	2:00 AM	*
208 Bachman Ave	CB Hannegans	1995	2:00 AM	2:00 AM	* No outdoor seating after 12 AM
8 North Santa Cruz Ave	Carry Nations	1997	2:00 AM	2:00 AM	* No alcohol after 1:30 AM, Bar only
102 South Santa Cruz Ave	Number 1 Broadway	1994	2:00 AM	2:00 AM	* Bar only
354 North Santa Cruz Ave	Double D's	1994	2:00 AM	2:00 AM	*

\*Original or existing CUP predates the approval of the modified Alcohol Policy

