



MEETING DATE: 12/5/05

ITEM NO. 12

COUNCIL AGENDA REPORT

DATE: November 22, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER A REQUEST TO MODIFY AN EXISTING CONDITIONAL USE PERMIT TO EXPAND FROM BEER AND WINE TO FULL LIQUOR SERVICE SERVICE (CAFÉ MARCELLA) ON PROPERTY ZONED C-2. CONDITIONAL USE PERMIT APPLICATION U-06-3. PROPERTY LOCATION: 368 VILLAGE LANE (APN 529-04-053). PROPERTY OWNER: THE WALTER B. FRANCK SUPPORT TRUST APPLICANT: CAFÉ MARCELLA, INC.

RECOMMENDATION:

- 1. Accept report in the form of verbatim meeting minutes from the Planning Commission regarding a modification of a Conditional Use Permit (Attachment 4).
2. Hold the public hearing and receive public testimony.
3. Close the public hearing.
4. Approve the application. If the application is approved, make the required findings (Attachment 1) and approve the application subject to the proposed conditions (Attachment 3)(Motion Required).
5. Refer to the Town Attorney for preparation of the appropriate resolution.

BACKGROUND:

On July 5, 1977, the Town Council approved Conditional Use Permit Application U-77-12 for a restaurant which was allowed to serve beer and wine with meals at 368 Village Lane. On May 27, 1981, the Planning Commission approved Conditional Use Permit Application U-81-9 to expand the floor area of the existing restaurant. Full liquor service was not requested at that time (Exhibit C of Attachment 5). In the fall of 1991, Café Marcella opened at this location.

(Continued on Page 2)

PREPARED BY: BUD N. LORTZ DIRECTOR OF COMMUNITY DEVELOPMENT

Reviewed by: Assistant Town Manager Town Attorney Clerk Finance
Community Development Revised: 11/22/05 5:12 pm



DISCUSSION:

1. Project Summary

The applicant is requesting approval to modify the existing Conditional Use Permit to allow an expansion from beer and wine service to full liquor service in conjunction with meals. The applicant states that this request is necessary due to competition from other local restaurants that have obtained approval for full liquor service (Exhibit E of Attachment 5). All other existing operations, including hours of operation and seating capacity, will remain unchanged. If the Council approves this request, service of beer, wine, and liquor at the existing restaurant, including the existing bar, will only be permitted with meals (Conditions #5 and 6 of Attachment 3).

2. Planning Commission:

The Planning Commission considered this matter on October 26, 2005. A copy of the verbatim Planning Commission minutes are included as Attachment 4. Pursuant to the Town's Alcoholic Beverage Policy (Attachment 7), the Commission forwarded the matter to Town Council and unanimously recommended that the Council approve the application. The Commission supported the request because they were able to make the required findings for the approval of a Conditional Use Permit (Attachment 1) and they determined that the request is consistent with the Town's Alcohol Policy (Attachment 7).

Additionally, the Commission requested that the Council consider modifying the existing Alcohol Policy (Attachment 7) to streamline the Conditional Use Permit modification process for converting from beer and wine service to full liquor service by allowing the Planning Commission to approve applications of this nature. The Commission suggested that the Council consider this request for existing restaurants, of a certain quality and/or which contain an existing separate bar, which are currently permitted to serve beer and wine. This issue is separate from the proposed application. Council may offer direction to staff regarding this concept at this time or may direct staff to bring this concept back to Council as a separate report.

CONCLUSION:

Staff has reviewed this proposal and believes that this is a reasonable request given that the existing business does not have a history of complaints and is in good standing with the Police Department. Additionally, staff and the Commission have determined that this request for full liquor service complies with the Town's Alcohol Policy and that the approval of this request will not create any additional impacts because the existing restaurant will continue to operate in the same manner it has for the last 14 years.

Additionally, if the Council believes that the Commission's request for a modification of the Town's Alcohol Policy should be considered then the Council should provide direction at this time or direct staff to agendaize this matter on a future agenda for further consideration.

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MAYOR AND TOWN COUNCIL

SUBJECT: 368 VILLAGE LANE (CAFÉ MARCELLA)

December 5, 2005

ENVIRONMENTAL ASSESSMENT:

As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.

FISCAL IMPACT: None

Attachments:

1. Required findings from the Staff Report for the Planning Commission meeting of October 26, 2005.
2. Existing Conditions of Approval.
3. Recommended Conditions of Approval.
4. Verbatim Planning Commission minutes for the meeting of October 26, 2005.
5. Report to the Planning Commission dated October 19, 2005 for the meeting of October 26, 2005.
6. Desk Item to the report to the Planning Commission dated October 26, 2005 for the meeting of October 26, 2005.
7. Alcoholic Beverage Policy

Distribution:

The Walter B Franck Support Trust, 19050 Skyline Blvd., Los Gatos, CA 95033

Café Marcella, Inc., 368 Village Ln., Los Gatos, CA 95030

BNL:JP:mdc

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REQUIRED FINDINGS FOR

368 Village Lane

Conditional Use Permit U-06-003

Requesting approval to modify an existing Conditional Use Permit Application to expand from beer and wine to full liquor service (Café Marcella) on property zoned C-2. APN 529-04-053.

PROPERTY OWNER: The Walter B. Franck Support Trust

APPLICANT: Café Marcella, Inc

- 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.
- 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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Planning Department
354-6872

CONDITIONAL USE PERMIT

U-94-43

On February 22, 1994 the Los Gatos Town Council adopted the Alcoholic Beverage Policy and an ordinance requiring all restaurants and bars to be in compliance with certain provisions of the Alcoholic Beverage Policy. In addition to the existing conditions, the conditions in **bold** become effective on February 22, 1995.

This permit issued to Cafe Marcella at 368 Village Lane allows operation of your establishment subject to the following conditions:

1. **So long as this establishment serves alcoholic beverages it 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. **This establishment shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.**
 - d. **The licensed operator 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.**
2. The number of seats shall not exceed 96.
3. The hours of operation shall not exceed 11:30 AM to 2:30 PM and 5:30 PM to 10:00 PM.
4. Beer and wine is permitted with meals.

RECOMMENDED CONDITIONS OF APPROVAL FOR:

368 Village Lane

Conditional Use Permit U-06-003

Requesting approval to modify an existing Conditional Use Permit Application to expand from beer and wine to full liquor service (Café Marcella) on property zoned C-2. APN 529-04-053.

PROPERTY OWNER: The Walter B. Franck Support Trust

APPLICANT: Café Marcella, Inc

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 Exhibit F in the report to the Planning Commission. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development or the Planning Commission, depending on the scope of the changes.
2. **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.
3. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 96.
4. **HOURS OF OPERATION:** Maximum hours of operation for the restaurant shall be 11:30 a.m. to 2:30 p.m. and 5:30 p.m. to 10:00 p.m. seven days a week.
5. **ALCOHOL SERVICE:** The service of beer, wine, and liquor for the restaurant 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.
6. **EXISTING BAR:** The service of beer, wine, and liquor at the existing bar is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.
7. **LIVE ENTERTAINMENT:** No live entertainment shall be provided unless the applicant receives future approval of live entertainment.
8. **TAKE OUT SERVICE:** There shall be no dedicated walk up counter.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

9. **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.
10. **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.
11. **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.
12. **DESIGNATED DRIVER PROGRAM:** The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.

368 Village Lane / U-06-003
October 26, 2005

13. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

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

14. INDEMNITY AGREEMENT. An indemnity agreement releasing the Town from any liability associated with the trash enclosure, and stating that the right to maintain a trash enclosure on Town property may be revoked at any time shall be signed prior to construction.
15. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
16. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
17. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
18. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
19. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

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

Los Gatos Planning
Commissioners: Michael Burke, Chair
John Bourgeois
Michael Kane
Phil Micciche
Tom O'Donnell
Lee Quintana
Joanne Talesfore

Assistant Director of
Community Development: Randy Tsuda

Town Attorney: Orry Korb

Transcribed by: Vicki L. Blandin
5500 Van Fleet Avenue
Richmond CA 94804
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P R O C E E D I N G S:

CHAIR BURKE: Has the Commission read the Desk
Item on Item #3? I'll call us back to session here. Would
the applicant or the representative from 368 Village Lane,
Conditional Use Permit U-06-003 come up? You have five
minutes, sir.

ALAIN STABLER: Good evening. My name is Alain
Stabler. I am the owner of Café Marcella and we are hoping
to get full liquor license. The reason why is when we
opened 15 years ago the trend was more toward wine than
liquor and we never really asked for any liquor license at
that point. For the last ten years now the liquor license
is a must. The liquor industry lost so much money against
the wine industry that lately they've started marketing
their products towards cocktails and gaining a lot of
ground over the wine. So now to appear at the restaurant
it's a must, it's a need to have a liquor license that
includes alcohol.

CHAIR BURKE: If that's it, I'll open for
questions, or do you have any other statement?

1 ALAIN STABLER: Well, we are losing our base
2 customers. We are losing a lot of customers due to not
3 having the liquor license. Our revenues are down. Our
4 business is not doing as well as it used to. Most of the
5 new restaurants in Los Gatos have a liquor license. I would
6 say just a few: (inaudible), Willow Street, the Brewing
7 Company recently got their liquor license, and I'm just
8 wondering if we could get our liquor license like anybody
9 else.

11 CHAIR BURKE: Are you ready to take some
12 questions?

13 ALAIN STABLER: Sure.

14 CHAIR BURKE: Okay, Mr. Bourgeois.

15 COMMISSIONER BOURGEOIS: Thank you. Have you read
16 the conditions of approval?

17 ALAIN STABLER: Yes.

18 COMMISSIONER BOURGEOIS: Because in your letter of
19 justification you state, "As a result over the last few
20 years we've watched our bar business erode from a packed bar
21 from opening to closing to only a handful of guests who are
22 waiting for their table." Yet condition #6 says that it's
23 only going to be limited to with meals. So are you okay with
24 that condition and you understand that condition?

25 ALAIN STABLER: Yes. Our manager wrote the letter
and he didn't quite understand the business. It's a

1 restaurant that has a bar, but we serve food at the bar. We
2 used to have a clientele that would come and dine at the bar
3 who doesn't come anymore. We used to be busy at the bar of
4 course, but the wine was always served with meals. So it's
5 not a bar that you're going to have a cocktail in any sense
6 of the way; it's a restaurant.

7 COMMISSIONER BOURGEOIS: So you're okay with that
8 condition?

9 ALAIN STABLER: Yes.

10 COMMISSIONER BOURGEOIS: Okay.

11 CHAIR BURKE: I'd like to clarify a question with
12 Staff, and I know I've asked this for other applications.
13 When they say alcohol only with meals, does that mean the
14 person has to buy food in order to buy a drink, or they have
15 to be serving food to be serving alcohol?

16 RANDY TSUDA: It means that you need to be serving
17 food during all bar hours, number one. It also means that if
18 you're coming in for a drink, the intent is that you are a
19 patron that will be getting a table and purchasing a meal.
20 The intent is to keep it from becoming a destination where
21 it's just a bar business and not a place you go for a
22 cocktail or a drink prior to being seated.

23 CHAIR BURKE: Okay. Commissioner Talesfore.

24 COMMISSIONER TALESFORE: Thank you. I consider you
25 a regionally famous restaurant, so why do people come to
your restaurant?

1 ALAIN STABLER: Well we've been established for 15
2 years now, and we have a very solid based clientele, and now
3 that we are seeing that solid based clientele kind of
4 disappear, we are getting scared, because the trend is
5 moving toward liquor: the martinis, the cosmopolitans and
6 things like this. And now we have people saying, "I would
7 like to come to your place, but you don't have a bar. You
8 don't have cocktails to start with, so we're going to go
9 somewhere else."

10 COMMISSIONER TALESFORE: You have wonderful wine
11 there, and I understand that alcohol is a great revenue for
12 restaurants, but I have to ask you. You sell wine sometimes
13 by the glass between I'm going to guess, eight and ten
14 dollars?

15 ALAIN STABLER: Mmm-hmm (Yes).

16 COMMISSIONER TALESFORE: Would you be having
17 martinis, or liquor that would make a martini, is that what
18 you're thinking?

19 ALAIN STABLER: Well no. I would love to keep on
20 selling wine and do business as usual, but I cannot anymore.

21 COMMISSIONER TALESFORE: But what would you be
22 charging for a martini? I want to see what the cost
23 difference is.

24 ALAIN STABLER: What we would like to do is to
25 start with a very reasonable price as a drink, just to

1 reflect the restaurant, because we've been very reasonable
2 for like 15 years.

3 COMMISSIONER TALESFORE: So you don't have an idea
4 what that could be?

5 ALAIN STABLER: What, the price of the drinks?

6 COMMISSIONER TALESFORE: Right.

7 ALAIN STABLER: Well about the same as the price
8 of the wine.

9 COMMISSIONER TALESFORE: I'm just trying to figure
10 out how much more money you could generate selling liquor
11 than you do selling wine.

12 ALAIN STABLER: The cost of liquor is less than
13 the cost of wine, so if I sell at the same price, I will
14 generate more revenue.

15 COMMISSIONER TALESFORE: All right.

16 CHAIR BURKE: I assume it's also an issue though
17 that people want to go to a restaurant that has a full
18 service bar as opposed to one that only serves wine and
19 beer?

20 ALAIN STABLER: Exactly.

21 CHAIR BURKE: And that's the real issue, not the
22 profit margin.

23 ALAIN STABLER: Yes, that's the real issue.

24 CHAIR BURKE: Commissioner Talesfore.

25 COMMISSIONER TALESFORE: Of Staff. So just to
clarify the standard, the way it's worded in the set of

1 conditions, I read that to mean that liquor would only be
2 served if you were sitting at a table. Now that's not what
3 you said, is that correct?

4 RANDY TSUDA: Right. Well, this is what you can do
5 is that you have several different options. That if you
6 order a drink you need to order a meal at the bar. You can
7 order a drink with the intent of then subsequently being
8 seated at a table, or alcohol can be served when you're
9 sitting down at your table. The intent is to keep these bar
10 operations that are part of a restaurant from becoming a
11 destination unto itself.

12 COMMISSIONER TALESFORE: And I would imagine that
13 there's also a code as to how many people could actually be
14 in the restaurant at any one time.

15 RANDY TSUDA: Right, that's regulated by the fire
16 code.

17 COMMISSIONER TALESFORE: And so we're trying not
18 to have this become just a standup bar, is that how you
19 would call it, where you can just come in and hang out
20 between the tables and the bar?

21 RANDY TSUDA: Correct, and that's what's specified
22 in the Town's alcohol policy. That's where this whole
23 requirement for meals being served during the hours you're
24 serving alcohol fundamentally comes from is the Town's
25 alcohol policy.

COMMISSIONER TALESFORE: Thank you.

LOS GATOS PLANNING COMMISSION 10/26/2005
Item #3, 368 Village Lane

1 CHAIR BURKE: Commissioner Kane, followed by
2 Commissioner Quintana.

3 COMMISSIONER KANE: From a practical standpoint,
4 Mr. Tsuda, it seems very difficult to enforce. Why have it
5 in there if we can't enforce it? I mean currently it's a
6 destination bar for wine. You can have a glass of wine at
7 the bar, and many people do. I've been there. I was very
8 confused by the language. We have a destination glass of
9 wine bar; not everybody goes in there to eat. Now we're
10 going to make it you can only have wine or liquor if you
11 order a meal at the bar.

12 It's a difficult one to enforce. Do we really want
13 to have language that may be winked at repeatedly and that
14 we can't enforce, or can we just take out that final
15 sentence in Item #6, "Service of beer, wine, or liquor
16 without meals at the existing bar is not permitted at this
17 location?" The intent of the Town's liquor policy seems to
18 be embodied in the first sentence. The last sentence seems
19 quite unenforceable and I don't think we need it. Your point
20 about alcohol being served while only meals are being served
21 is embodied in the first sentence. The last sentence seems
22 rather specific that you can't go to the bar and have a
23 drink.

24 RANDY TSUDA: I have no problem if you wanted to
25 leave the last sentence out.

LOS GATOS PLANNING COMMISSION 10/26/2005
Item #3, 368 Village Lane

1 COMMISSIONER KANE: I couldn't hear you. You said
2 what?
3 RANDY TSUDA: I have no problem if the Commission
4 wants to delete that last sentence. I believe it still would
5 be consistent with the Town's alcohol policy.
6 CHAIR BURKE: Commissioner Quintana.
7 COMMISSIONER QUINTANA: Along that line, in other
8 words what this is trying to do is say that a standalone bar
9 is not permitted, is that correct?
10 RANDY TSUDA: A standalone bar *is* permitted *if*
11 meals are being served and during the same period of time.
12 COMMISSIONER QUINTANA: So currently this
13 restaurant has a standalone bar?
14 RANDY TSUDA: Right.
15 COMMISSIONER QUINTANA: Okay.
16 RANDY TSUDA: And the alcohol policy has a
17 specific section entitled, "Restaurants with Standalone
18 Bars," and it states...
19 COMMISSIONER QUINTANA: Okay, I think I need a
20 definition of "standalone bar," because I assumed a
21 standalone bar meant that you could go in and order liquor
22 without having food, as opposed to a non-standalone bar,
23 there could be physically a bar, but you could only have
24 liquor if you were eating a meal.
25 RANDY TSUDA: Yes. The way it's been enforced is
that there are restaurants that have wine, beer, and liquor

1 that do not have bars at all. This is a restaurant that has
2 a bar area. Well, the way it's been enforced, if you have a
3 designated bar area, then we have interpreted that to be a
4 standalone bar as opposed to a restaurant that has no bar
5 area.
6 COMMISSIONER QUINTANA: So it currently has a
7 standalone bar?
8 RANDY TSUDA: Yes.
9 COMMISSIONER QUINTANA: Okay.
10 ALAIN STABLER: And if I may add, since we
11 anticipate the liquor factor, we also are going to offer
12 appetizers at the bar for whoever wants to have a glass of
13 wine and food at the same time.
14 COMMISSIONER QUINTANA: That's not what this says.
15 CHAIR BURKE: Okay, we have no speakers on this.
16 Oh, I need a speaker card. So I stand corrected, we do have
17 a speaker if you want to bring the speaker card up. You will
18 have time to rebut at the end and further questions. Please
19 state your name and address for the record.
20 DEAN DEVENCINCI: My name is Deal Devencinci. I
21 live at 2384 Rupert Drive in San Jose. We own DD's Sports
22 Grille and we own Forbes Mill Steakhouse.
23 We've been through this before with Forbes Mill
24 Steakhouse. I would like to, for any uneasy minds, and I
25 don't mean to belittle anybody in the Planning Commission,
but I just want to remind you that a bar doesn't necessarily

1 mean there's a bunch of drunks hanging out there. What I've
2 seen, what I've heard, being a merchant that I own two bars
3 in town, is that people like to have a martini or a scotch
4 before dinner, and then they have wine with dinner.

5 Unfortunately our friends at Café Marcella have
6 kind of fallen to the backseat because most everybody else
7 has a liquor license and they're able to do what they're
8 unable to do. In my opinion I think they have the best
9 restaurant in town. My wife and I love to go in there, but
10 it's an inconvenience to got to DD's to have a cocktail
11 before.

12 So what I would like to remind everybody is that
13 from what I read their conditional use permit says that they
14 close at 10:00 o'clock. Now if it's 10:30, which is last
15 call, 10:00 o'clock, whatever it is, a 10:00 o'clock time
16 does not allow people to come in there and get drunk. It's
17 just not going to happen. If you're worried about the people
18 that are walking down the street that are going to come in
19 there, have a couple of shots, and then move onto the next
20 venue, it's not going to happen at this wonderful
21 restaurant. A martini with dinner? Yes.

22 I agree a hundred-percent with Mr. Kane with
23 taking out that last sentence. It is a very gray area. If
24 somebody wants to come in and have a martini sitting at the
25 bar, I think that should be allowed. They're not going to
get the young kids in there. Chances are probably ninety-

1 percent whoever has those two martinis, or whoever the two
2 people are that have a martini up at the bar, are having
3 dinner there. The bar supports the restaurant, not the
4 restaurant supports the bar, so I'm here just to support our
5 friends at Café Marcella and just remind everybody on the
6 Planning Commission that just because it's a bar doesn't
7 mean it's a big drunk-fest.

8 CHAIR BURKE: Thank you. And I guess also
9 competition is good. Jason Farwell.

10 JASON FARWELL: Hi, Jason Farwell, 18841 Blythwood
11 Drive, Los Gatos.

12 I've had some experience with this issue in my
13 time here in town and I certainly support the application. I
14 also concur with Mr. Kane up there regarding the
15 enforceability issue because this is extremely hard to
16 enforce. I've dealt with the issue for a number of years as
17 a restaurant/bar owner.

18 I would ask the question, because it is a little
19 unclear at this point, and my understanding of the code was
20 that in order for you to consume a drink at this type of
21 establishment you'd have to have a meal with it, and it
22 doesn't sound to me like that's the case anymore, and I was
23 just wondering if I can get some clarification on that?

24 CHAIR BURKE: I believe Staff gave the three
25 situations where you could order a drink at the bar while
waiting for a table, order a drink at the bar while you had

1 food at the bar, or have a drink at your table with your
2 meal.

3 JASON FARWELL: So exactly, we come back to the
4 point of enforceability, and the fact of the matter is that
5 you can walk into any establishment here in town under this
6 type of code and have a several drinks without having food.
7 That's really just a point I'd like to make, and the
8 enforceability issue here is one that I struggled with,
9 because I dealt with the Town on a number of occasions where
10 let's just say I had a number of close meetings with the
11 Town regarding alcohol use. Thank you.

12 CHAIR BURKE: Thank you. Commissioner Quintana, it
13 looks like you have a question or comment.

14 COMMISSIONER QUINTANA: You're saying from the
15 standpoint of a restaurant owner, your ability to enforce
16 that condition...

17 JASON FARWELL: That condition, and also the
18 Town's ability to enforce that condition, and how the Town
19 would enforce that condition. Arbitrarily or...

20 COMMISSIONER QUINTANA: As a restaurant owner, you
21 are not...

22 JASON FARWELL: I'm no longer a restaurant owner.
23 I fortunately got out of the business.

24 COMMISSIONER QUINTANA: As a previous restaurant
25 owner, you weren't able to instruct your employees that they

1 could not serve at the bar unless food was being served
2 along with it?

3 JASON FARWELL: That's what was stressed to us.
4 That's what I was told.

5 COMMISSIONER QUINTANA: I'm asking you if you
6 could instruct...

7 JASON FARWELL: Absolutely, we certainly did have
8 a number of employee meetings letting them know what we
9 expected of them. Again, what our employees did, you know,
10 I'm sure that there were several drinks served without food,
11 as there is in every establishment here in town. That's just
12 a matter of fact.

13 COMMISSIONER QUINTANA: Thank you.

14 CHAIR BURKE: Commissioner Micciche.

15 COMMISSIONER MICCICHE: Randy, could we put in a
16 condition that says if a customer comes in and says, "I have
17 no intention of eating," that they refuse to serve them?

18 RANDY TSUDA: I personally would love to have that
19 expense account and monitor the situation at this
20 restaurant. Let me just point out, if the Commission has
21 concerns about the existing alcohol policy, this is the
22 Council's alcohol policy and that needs to be referred to
23 the Council.

24 CHAIR BURKE: Do any of the commissioners who have
25 their hands raised have a question of Mr. Farwell?

1 JASON FARWELL: I think yeah, the intent point is a
2 very good one. Thank you.

3 CHAIR BURKE: Thank you. Do you want to ask
4 questions of Staff now, or do you want to get a rebuttal?

5 COMMISSIONER KANE: I've got a motion.

6 CHAIR BURKE: Well, we still have a public hearing
7 going on here.

8 COMMISSIONER MICCICHE: Wait until we close.

9 CHAIR BURKE: Yes. So I see no more speaker cards.
10 Would the applicant like to come back up and, I don't want
11 to say rebut, but do you have anything? Or does anybody?
12 Does the Commission have any questions of the applicant?
13 Seeing none, if you want to remain seated, that's fine. I'll
14 close the public hearing and I think people are going to
15 jump the gun and try to get a motion on me. But I'm going to
16 start at the far end. Commissioner Quintana.

17 COMMISSIONER QUINTANA: This is a question of
18 Staff. Since once we approve a conditional use permit it
19 goes with the land, I'm assuming that the last sentence in
20 #6 is somewhat of a protection for the Town should ownership
21 change and the ambience or quality of the restaurant change
22 to give the Town some ability of enforcement should there
23 become problems in the future? That's a question.

24 RANDY TSUDA: My read on the last sentence of that
25 condition is it's just simply stating exactly what the first
sentence states, but in the negative rather than the

1 positive. That's why I have no problem deleting the last
2 sentence; it simply repeats what has already been stated in
3 the condition, just in a different way.

4 COMMISSIONER QUINTANA: Okay, so it's both the
5 same. Okay.

6 CHAIR BURKE: Commissioner O'Donnell.

7 COMMISSIONER O'DONNELL: I just want to say that
8 it's a fine restaurant and I agree that I think it
9 (inaudible) bar would be very helpful. I think the policy
10 (inaudible) I read the policy (inaudible) intention of the
11 bar, as I think it was put, bars are to facilitate the
12 restaurant, not the other way around. It's not a perfect
13 world, but they could come in ostensibly for dinner and get
14 up and leave and they can't stop them, but that's not their
15 fault. And if they close at 10:00 or 10:30, I mean it's not
16 going to be that kind of bar anyway. So I think the
17 conditions we've got, and I agree with Michael that we ought
18 to take out that last sentence of #6, but if we do that I
19 think this is a fine thing to do. I would make the motion,
20 but I think Michael wants to.

21 CHAIR BURKE: Commissioner Kane, do you have a
22 comment, question?

23 COMMISSIONER KANE: I'm ready to make a motion
24 when the chair is ready to receive a motion.
25

1 CHAIR BURKE: Okay, does Commissioner Talesfore
2 wish to make a comment or have a question? If not I will
3 turn it back to Mr. Kane to make a motion.
4 COMMISSIONER TALESFORE: Can I make a comment?
5 CHAIR BURKE: You make a comment, and I'll make a
6 comment, and Mr. Kane can make a motion.
7 COMMISSIONER TALESFORE: This is a fine restaurant
8 in town. Without a reservation you really can't get in. I
9 loved having wine with the meal because it enhances it. It
10 saddens me somewhat to think that you're forced to compete
11 in this world and you have to offer liquor when wine with
12 your food is so phenomenal. I tend to think sometimes that
13 liquor can deaden a meal. Anyway, that being said, I would
14 support a motion.
15 COMMISSIONER MICCICHE: You can still order wine,
16 you know?
17 CHAIR BURKE: She will.
18 COMMISSIONER TALESFORE: Let's see, how many of
19 you in here know me?
20 CHAIR BURKE: I want to make a question of Staff
21 just to make sure. Right now they have a permit for a
22 standalone bar. Assuming this gets passed, they will no
23 longer have a permit for a standalone? Am I misreading that?
24 RANDY TSUDA: No, they still have a permit.
25 CHAIR BURKE: Oh right, and they have to serve
food with their standalone bar now?

1 RANDY TSUDA: The difference is they now can serve
2 liquor in addition to beer and wine.
3 CHAIR BURKE: But are they losing the ability to
4 have people only at the bar to go get a glass of wine now,
5 where they won't be able to after this passes? That's what
6 I'm thinking, not standalone bar, but destination standalone
7 bar. Or is that already a condition that they're not
8 technically supposed to be doing?
9 RANDY TSUDA: Let me check the old condition.
10 Their current use permit does not have that restriction. The
11 use permit predates the Town's alcohol policy.
12 CHAIR BURKE: So basically they're giving up the
13 right to have somebody come in there for just a glass of
14 wine to get full alcohol service?
15 RANDY TSUDA: Right.
16 CHAIR BURKE: Okay, and the applicant is aware of
17 that? Okay. And as a longtime resident that saddens me, but
18 okay. So Mr. Kane, a motion.
19 COMMISSIONER KANE: I recommend we approve the
20 request, that we forward this application to the Town
21 Council with the following recommendation that we approve
22 the request to expand from beer and wine to full liquor
23 service with the findings as included in Exhibit A, and the
24 recommended conditions for approval in Exhibit D with Item
25 #6 as amended.

1 CHAIR BURKE: Mr. Kane, I'm going to interrupt you
2 for a minute because I am confused based on the staff
3 report. Are we making a recommendation?

4 RANDY TSUDA: You are making a recommendation to
5 the Town Council.

6 CHAIR BURKE: It says the action of the Planning
7 Commission is final unless appealed within ten days on the
8 staff report. Is that incorrect? It's an error?

9 RANDY TSUDA: It is an error. The recommendation
10 in Section C of the staff report is what is correct.

11 CHAIR BURKE: Okay. Thank you.

12 COMMISSIONER KANE: That's my motion.

13 CHAIR BURKE: Go ahead.

14 COMMISSIONER KANE: That's it.

15 COMMISSIONER TALESFORE: And I second it.

16 COMMISSIONER BURKE: Before I call the question,
17 do we have any questions or discussion? Commissioner
18 Quintana.

19 COMMISSIONER QUINTANA: Yeah, I'm going to support
20 the motion, but I do have a question. Maybe it's a question
21 of Counsel. It seems like every one of these applications
22 that comes before us that's some existing restaurant that
23 has an existing standalone bar and is requesting full liquor
24 service has been approved. I guess my question is would it
25 simplify our process if we amended the alcohol policy to say
if you have an existing restaurant with a standalone bar you

1 may have full liquor service, or any restaurant of a certain
2 quality may have full liquor service, because otherwise
3 they're noncompetitive with the other restaurants in town.

4 ORRY KORB: No doubt, and I'm assuming that that
5 is a policy suggestion that you're making to Counsel?

6 COMMISSIONER QUINTANA: Yes, as part of forwarding
7 our recommendation. I don't know if that needs to be made as
8 part of the motion or is that just separate?

9 CHAIR BURKE: I don't know. Would the maker of the
10 motion like that to be made part of the motion? Would that
11 carry more weight?

12 RANDY TSUDA: It doesn't need to be as part of the
13 motion. We can simply pass the comment on to the Council.

14 CHAIR BURKE: Okay. Can I get a consensus on the
15 comment? That way it's coming from the Commission. Is that a
16 consensus on that comment?

17 COMMISSIONER MICCICHE: It's okay with me.

18 CHAIR BURKE: Okay, it looks like you have a
19 consensus on the comment. Okay, we have a motion, a second.
20 All those in favor? It's carried.

21 ORRY KORB: And there are no appeal rights because
22 this is a recommendation to the Town Council, which will be
23 hearing the application after a public notice.
24
25

Date: October 19, 2005
For Agenda Of: October 26, 2005
Agenda Item: 3

REPORT TO: The Planning Commission
FROM: The Development Review Committee
LOCATION: 368 Village Lane
Conditional Use Permit U-06-003

Requesting approval to modify an existing Conditional Use Permit Application to expand from beer and wine to full liquor service (Café Marcella) on property zoned C-2. APN 529-04-053.

PROPERTY OWNER: The Walter B. Franck Support Trust

APPLICANT: Café Marcella, Inc.

DEEMED COMPLETE: October 11, 2005

FINAL DATE TO TAKE ACTION: April 11, 2006

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

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

- EXHIBITS:
- A. Required Findings
 - B. Resolution 2001-106 (4 pages)
 - C. Existing Conditions of Approval
 - D. Proposed Conditions of Approval including the modification requested by the applicant (2 Pages)
 - E. Letter of Justification, received August 1, 2005 (2 pages)
 - F. Existing Floor Plan, received August 31, 2005

RECOMMENDATION

SUMMARY: Forward a recommendation to the Town Council.

A. BACKGROUND:

On July 5, 1977, Conditional Use Permit Application U-77-12 was approved by the Town Council for a restaurant at 368 Village Lane. On May 27, 1981, Conditional Use Permit Application U-81-9

was approved by the Planning Commission to expand the floor area of the existing restaurant. The approvals also allowed the restaurant to serve beer and wine with meals. Full liquor service was not requested at that time (See Exhibit C). In the fall of 1991 Café Marcella opened at this location.

B. REMARKS:

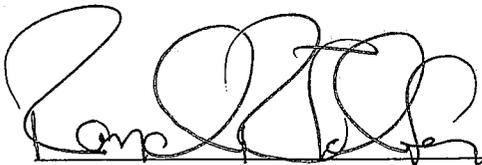
The applicant is requesting approval to modify their existing Conditional Use Permit to allow an expansion from beer and wine service to full liquor service in conjunction with meals. The applicant states that this request is necessary due to competition from other local restaurants that have obtained permission for full liquor service (Exhibit E). All other existing operations, including hours of operation and seating capacity, will remain unchanged. Staff has added a condition (Exhibit D, Condition #6) which states that service of beer, wine, and liquor at the existing bar is permitted only with meals.

The Police Department has reviewed this proposal and believes that this is a reasonable request given that the existing business does not have a history of complaints and is in good standing with the Police Department. Additionally, staff has determined that this request for full liquor service complies with the Town's Alcohol Policy and that the approval of this request will not create any additional impacts because the existing restaurant will continue to operate in the same manner it has for the last 14 years.

C. RECOMMENDATION:

Pursuant to the Town's Alcohol policy, this matter will be forwarded to the Town Council for final consideration. The Commission should forward this application to the Council with the following recommendation:

1. Approval of the request to expand from beer and wine to full liquor service with the Findings included as Exhibit A; and
2. If the Commission has concerns with the application, it can:
 - a. Recommend approval of the application with modified conditions, or
 - b. Make the findings and recommend denial of the application.



Bud N. Lortz, Director of Community Development

Prepared by: Joel Paulson, Associate Planner

BNL:JP:mdc

cc: The Walter B Franck Support Trust, 19050 Skyline Blvd., Los Gatos, CA 95033
Café Marcella, Inc., 368 Village Ln., Los Gatos, CA 95030

N:\DEV\REPORTS\2005\368Village.wpd

REQUIRED FINDINGS FOR

368 Village Lane

Conditional Use Permit U-06-003

Requesting approval to modify an existing Conditional Use Permit Application to expand from beer and wine to full liquor service (Café Marcella) on property zoned C-2. APN 529-04-053.

PROPERTY OWNER: The Walter B. Franck Support Trust

APPLICANT: Café Marcella, Inc

- 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.
- 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.

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 29.30.310(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 29.20.310(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 which that are a direct result of patrons actions;
- II. The number of complaints received from residents ad 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.



TOWN of LOS GATOS

Planning Department
354-6872

June 1, 1981

Walter and Joan Franck
368 Village Lane
Los Gatos, California 95030

Re: Conditional Use Permit Application U-81-9

Dear Mr. and Mrs. Franck:

On May 27, 1981 the Town Planning Commission approved the above application requesting approval of plans to expand the floor area of an existing restaurant located at 360-368 Village Lane, subject to the following conditions:

1. The number of seats shall not exceed 96.
2. The hours of operation are limited to the period from 11:30 a.m. to 2:30 p.m. and 5:30 p.m. to 10:00 p.m. daily.
3. Three street tree wells shall be provided subject to the approval of the Parks and Forestry and Public Works Departments.
4. Details of the trash enclosure and its location shall be subject to the approval of the Planning Director and Fire Department.
5. Interior exit signs, panic hardware and exhaust hood and duct system fire protection shall be installed to the satisfaction of the Fire Department.

NOTE: Pursuant to Section 5.20.050 of the Zoning Ordinance, this approval may be appealed to the Town Council within seven (7) days of the date the approval is granted. Therefore, this action for approval should not be considered final, and no permits by the Town will be issued until the appeal period has passed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lee E. Bowman". The signature is written in dark ink on a light background.

LEE E. BOWMAN
Planning Director

LEB:pd

cc: Ms. Sharon Silver
Development Review Committee

RECOMMENDED CONDITIONS OF APPROVAL FOR:

368 Village Lane

Conditional Use Permit U-06-003

Requesting approval to modify an existing Conditional Use Permit Application to expand from beer and wine to full liquor service (Café Marcella) on property zoned C-2. APN 529-04-053.

PROPERTY OWNER: The Walter B. Franck Support Trust

APPLICANT: Café Marcella, Inc

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 Exhibit F in the report to the Planning Commission. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development or the Planning Commission, depending on the scope of the changes.
2. **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.
3. **NUMBER OF SEATS:** The maximum number of seats for the restaurant shall not exceed 96.
4. **HOURS OF OPERATION:** Maximum hours of operation for the restaurant shall be 11:30 a.m. to 2:30 p.m. and 5:30 p.m. to 10:00 p.m. seven days a week.
5. **ALCOHOL SERVICE:** The service of beer, wine, and liquor for the restaurant 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.
6. **EXISTING BAR:** The service of beer, wine, and liquor at the existing bar 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. Service of beer, wine, or liquor without meals at the existing bar is not permitted at this location.
7. **LIVE ENTERTAINMENT:** No live entertainment shall be provided unless the applicant receives future approval of live entertainment.
8. **TAKE OUT SERVICE:** There shall be no dedicated walk up counter.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

9. **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.
10. **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.
11. **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.
12. **DESIGNATED DRIVER PROGRAM:** The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated

368 Village Lane / U-06-003

October 26, 2005

drivers.

13. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

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

(Engineering Division)

14. INDEMNITY AGREEMENT. An indemnity agreement releasing the Town from any liability associated with the trash enclosure, and stating that the right to maintain a trash enclosure on Town property may be revoked at any time shall be signed prior to construction.
15. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
16. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
17. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
18. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
19. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

Letter of Justification

Café Marcella, Inc.
368 Village Lane
Los Gatos, CA 95030
408.590-0901

RECEIVED

AUG. 1 2005

TOWN OF LOS GATOS
PLANNING DIVISION

This letter of justification pertains to our request for a change in the Use Permit for Café Marcella to allow the service of liquor on the premises.

Introduction

Café Marcella began in the fall of 1991 as a small start up with expectations of becoming an exceptional restaurant highly regarded by restaurant goers as a place for fine food, fine wine, neighborhood comfort, and great value, and by the town as a successful, growing business. We have achieved most of what we had expected. However, competition has increased significantly in Los Gatos since our inception, and we are finding it increasingly difficult to compete successfully with other licensed restaurants who hold on-premise beer, wine, and spirit licenses.

When we first opened we believed that beverage consumption trends justified having only an on-premise beer and wine license. However, those trends have changed radically, and liquor consumption, as an aperitif or cocktail, has increased significantly. As a result, over the last few years we have watched our bar business erode from a packed bar from opening to closing to only a handful of guests who are waiting for their table. This trend has forced us to examine our competition and to re-think our initial business strategy.

For us to continue as a successful member of the Los Gatos business community it has become imperative that we obtain an on-premise license for the sale of liquor in the Restaurant. We are writing this letter of justification in order to obtain a change in our Use Permit so that we can apply to the Alcoholic Beverage Control in order to obtain that license.

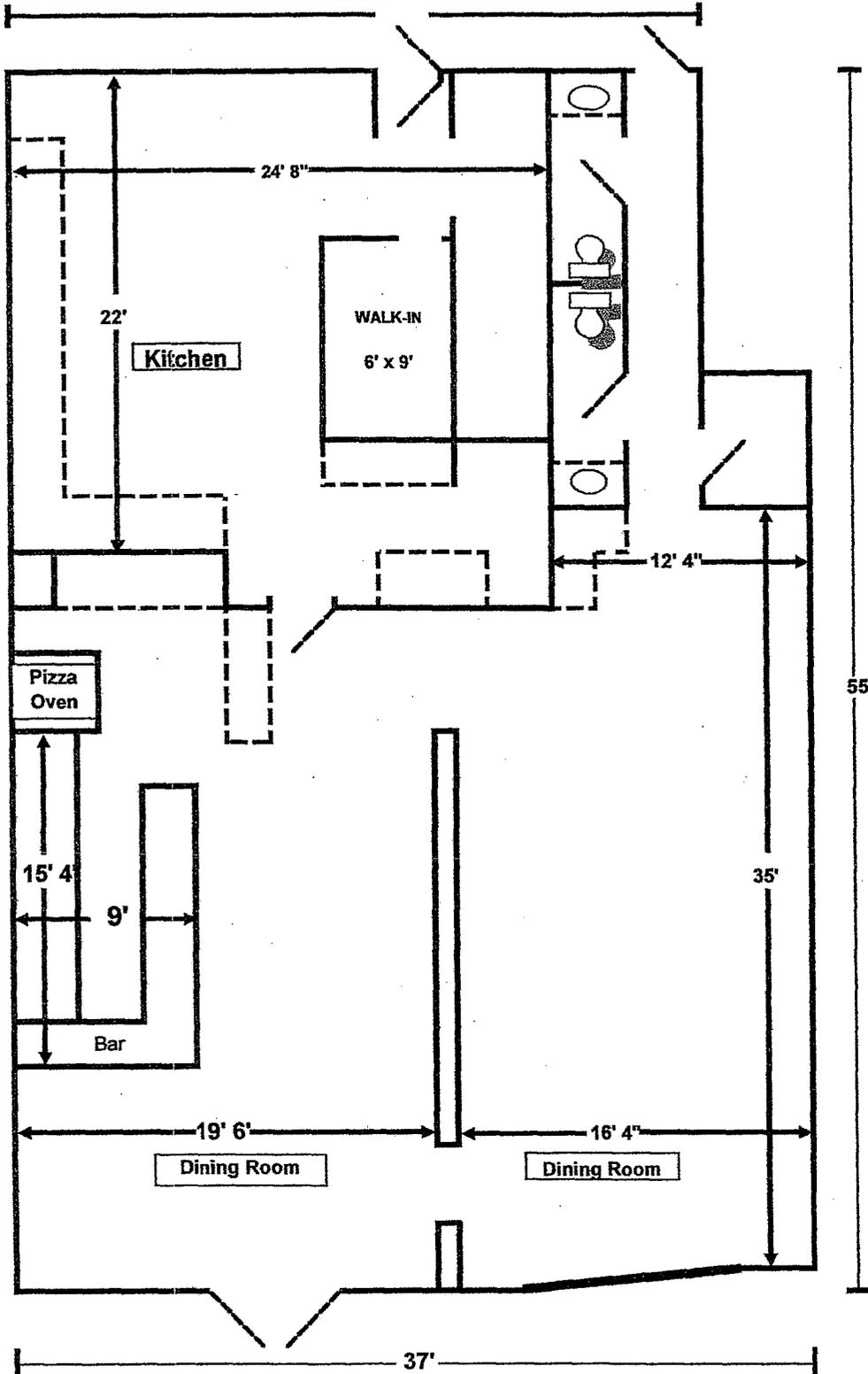
The Plan

As we already have a bar in the restaurant, we do not plan to make any changes in the current design of the restaurant. There will be no construction or alterations which would require a filing with the Town of Los Gatos. The liquor selection will be a simple one with only a few selections that represent the quality of the restaurant and will require no additional storage space in the bar area.

Environmental Concerns

As there will be no changes to the existing facility there will be no impact on the environment. We will have no additional drains affecting the plumbing or any changes in the electrical configuration which would affect the existing wiring.

Café Marcella Restaurant On Premise Beer and Wine License
41-265963



Date: October 26, 2005
For Agenda Of: October 26, 2005
Agenda Item: 3
DESK ITEM

REPORT TO: The Planning Commission
FROM: The Development Review Committee
LOCATION: 368 Village Lane
Conditional Use Permit U-06-003

Requesting approval to modify an existing Conditional Use Permit Application to expand from beer and wine to full liquor service (Café Marcella) on property zoned C-2. APN 529-04-053.
PROPERTY OWNER: The Walter B. Franck Support Trust
APPLICANT: Café Marcella, Inc.

EXHIBITS: A-F. Previously Submitted
G. Complete copy of Letter of Justification (2 Pages)

A. REMARKS:

During photocopying of Planning Commission packet materials the second page of the applicant's Letter of Justification was not reproduced. As a result, Exhibit G shall replace Exhibit E.



Bud N. Lortz, Director of Community Development

Prepared by: Joel Paulson, Associate Planner

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Letter of Justification

Café Marcella, Inc.
368 Village Lane
Los Gatos, CA 95030
408.590-0901

RECEIVED

AUG 1 2005

TOWN OF LOS GATOS
PLANNING DIVISION

This letter of justification pertains to our request for a change in the Use Permit for Café Marcella to allow the service of liquor on the premises.

Introduction

Café Marcella began in the fall of 1991 as a small start up with expectations of becoming an exceptional restaurant highly regarded by restaurant goers as a place for fine food, fine wine, neighborhood comfort, and great value, and by the town as a successful, growing business. We have achieved most of what we had expected. However, competition has increased significantly in Los Gatos since our inception, and we are finding it increasingly difficult to compete successfully with other licensed restaurants who hold on-premise beer, wine, and spirit licenses.

When we first opened we believed that beverage consumption trends justified having only an on-premise beer and wine license. However, those trends have changed radically, and liquor consumption, as an aperitif or cocktail, has increased significantly. As a result, over the last few years we have watched our bar business erode from a packed bar from opening to closing to only a handful of guests who are waiting for their table. This trend has forced us to examine our competition and to re-think our initial business strategy.

For us to continue as a successful member of the Los Gatos business community it has become imperative that we obtain an on-premise license for the sale of liquor in the Restaurant. We are writing this letter of justification in order to obtain a change in our Use Permit so that we can apply to the Alcoholic Beverage Control in order to obtain that license.

The Plan

As we already have a bar in the restaurant, we do not plan to make any changes in the current design of the restaurant. There will be no construction or alterations which would require a filing with the Town of Los Gatos. The liquor selection will be a simple one with only a few selections that represent the quality of the restaurant and will require no additional storage space in the bar area.

Environmental Concerns

As there will be no changes to the existing facility there will be no impact on the environment. We will have no additional drains affecting the plumbing or any changes in the electrical configuration which would affect the existing wiring.

Hazardous Materials and Air Quality

The inclusion of liquor in our beverage selection will not create any hazardous materials or impact the restaurant's air quality.

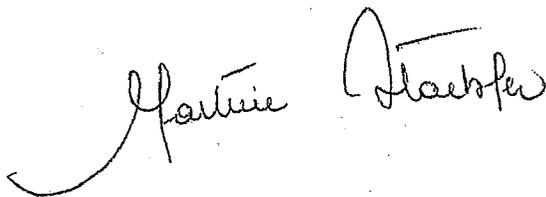
Conclusion

As a long time member of the Los Gatos business community we feel it is incumbent upon the town to grant us our request for a change in our Use Permit. As this is a simple alteration in the Use Permit which requires no structural, plumbing, or electrical modifications in order to make the changes, we see no reason why the Town of Los Gatos would decline to grant us this change. The granting of this change would give us the ability to offer our guests what they want. In the interim our guests have found it necessary to drink elsewhere before they come to dine, or, even worse, to dine at an establishment where they can order cocktails and spirits.

If we are to continue to succeed in this highly competitive market as a member of the Los Gatos business community we need to be able to compete on an even level with the other restaurants. We ask that you grant us the opportunity to do just that. Please find it in your thoughtful jurisdiction to grant our request for this change in our Use Permit.

Sincerely,

Alain and Martine Staebler,
Proprietors Café Marcella



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 29.30.310(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 29.20.310(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 which that are a direct result of patrons actions;
- II. The number of complaints received from residents ad 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.

