



MEETING DATE: 12/19/2005  
AGENDA ITEM: 11

COUNCIL AGENDA REPORT

DATE: December 15, 2005  
TO: MAYOR AND TOWN COUNCIL  
FROM: ORRY P. KORB, TOWN ATTORNEY **OK**  
SUBJECT: ADOPT RESOLUTION APPROVING A MODIFICATION TO A CONDITIONAL USE PERMIT APPLICATION TO EXPAND FROM BEER AND WINE TO A FULL LIQUOR SERVICE (CAFÉ MARCELLA) ON PROPERTY ZONED C-2. CONDITIONAL USE PERMIT U-06-003. APN 529-04-053. PROPERTY LOCATION: 368 VILLAGE LANE. PROPERTY OWNER: THE WALTER B. FRANCK SUPPORT TRUST. APPLICANT; CAFÉ MARCELLA, INCORPORATED

RECOMMENDATION:

Adopt resolution confirming Council action on December 5, 2005.

DISCUSSION:

On December 5, 2005, Council granted the approval of a modification to an existing conditional use permit to expand from beer and wine to a full liquor service for Café Marcella.

Attachments: Resolution  
Conditions of Approval (Exhibit A)

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

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:/wp [N:\ATY\Report Cafe Marcella.wpd]

Reviewed by: AK Town Manager \_\_\_\_\_ Assistant Town Manager \_\_\_\_\_ Clerk Administrator  
                  AS Finance BN Community Development

Rev: 12/15/05 2:31 pm  
Reformatted: 7/19/99

RESOLUTION NO.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
APPROVING A MODIFICATION TO A CONDITIONAL USE PERMIT APPLICATION TO  
EXPAND FROM BEER AND WINE TO A FULL LIQUOR SERVICE (CAFÉ MARCELLA)  
ON PROPERTY ZONED C-2.

CONDITIONAL USE PERMIT U-06-003.

APN 529-04-053.

PROPERTY LOCATION: 368 VILLAGE LANE.

PROPERTY OWNER: THE WALTER B. FRANCK SUPPORT TRUST.

APPLICANT; CAFÉ MARCELLA, INCORPORATED

**WHEREAS:**

A. This matter came before Council for public hearing on December 5, 2005, and was regularly noticed in accordance with state law.

B. Council received testimony and documentary evidence from the applicant 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 packet of material contained in the Council Agenda Report dated November 22, 2005, along with subsequent reports and materials prepared concerning this application.

C. Applicant is requesting approval to modify a conditional use permit to expand from beer and wine to full liquor service.

D. The Planning Commission considered this matter on October 26, 2005 and recommended that the application be approved by Council.

E. The Planning Commission decision was correct and Council hereby incorporates herein the recommended findings of the Commission and makes the additional finding that the 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 fourteen years

**RESOLVED:**

1. The request to modify Conditional Use Permit U-06-3 is approved with the conditions attached hereto as Exhibit 1 and incorporated herein.

2. The decisions constitutes a final administrative decision pursuant to Code of Civil Procedure Section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by State and Federal Law.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California held on the 19th day of December , 2005, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

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

N:\ATY\Reso Cafe Marcella.wpd

**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.

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.