

**RESOLUTION NO. 2008-1115**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALABASAS, APPROVING THE REMOVAL OF ONE HERITAGE OAK TREE AND ONE NON-HERITAGE OAK TREE AND ENCROACHMENT INTO THE PROTECTED ZONE OF THREE NON-HERITAGE OAK TREES IN ORDER TO CONSTRUCT A SEVENTY-FIVE UNIT AFFORDABLE SENIOR HOUSING DEVELOPMENT FOR HOUSEHOLDS EARNING BETWEEN THIRTY AND SIXTY PERCENT OF THE AREA MEDIAN INCOME, WITH A SUBTERRANEAN PARKING GARAGE AT 4803 EL CANON AVENUE, IN THE COMMERCIAL, OLD TOWN (CT) ZONING DISTRICT.**

Section 1. The City Council has considered all of the evidence submitted into the administrative record which includes, but is not limited to:

1. Agenda reports were prepared by the Community Development Department.
2. Staff presentation at the public hearing held on January 16, 2008 before the City Council.
3. The City of Calabasas Land Use and Development Code, General Plan, and all other applicable regulations and codes.
4. Public comments, both written and oral, received and/or submitted at or prior to the public hearing, supporting and/or opposing the applicant's request.
5. Testimony and/or comments from the applicant and its representatives submitted to the City in both written and oral form at or prior to the public hearing.
6. All related documents received and/or submitted at or prior to the public hearing.
7. Planning Commission Resolution No. 08-408 recommending approval to the City Council of File No. OAK-007-010.

Section 2. Based of the foregoing evidence, the City Council finds that:

1. The applicant submitted an application and Oak Tree Report for File No. OAK-007-010 on May 9, 2007.
2. On June 6, 2007, staff determined that the application was incomplete and the applicant was duly notified of this incomplete status.
3. On August 7, 2007, the applicant resubmitted the oak tree report, and the application was deemed complete.
4. The City arborist reviewed the oak tree report and recommended approval with conditions.
5. A Mitigated Negative Declaration was prepared, in accordance with CEQA, and was circulated for public review from October 31, 2007 to November 29, 2007.
6. On January 3, 2008, the Planning Commission approved the Mitigated Negative Declaration and the associated project and recommended to the City Council approval of File No. OAK-007-010.
7. Notice of the January 16, 2008 City Council public hearing was posted at Juan de Anza Bautista Park, the Calabasas Tennis and Swim Center, Gelson's market and at Calabasas City Hall.
8. Notice of the January 16, 2008 City Council public hearing was provided to property owners within 500 feet of the property, as shown on the latest equalized assessment roll.
9. Notice of the City Council public hearing was mailed or delivered at least ten (10) days prior to the hearing to the project applicant.
10. Notice of the City Council public hearing included the notice requirements set forth in Government Code Section 65009 (b)(2).
11. The project site is currently zoned Commercial, Old Town (CT).
12. The land use designation for the project site under the City's adopted General Plan is Business – Old Town (B-OT).
13. The land uses surrounding the subject property are zoned Residential, Multi Family (R-MF), Commercial, Old Town (CT) and Commercial, Office (CO).

Section 3. In view of all of the evidence and based on the foregoing findings, the City Council concludes as follows:

## FINDINGS

Section 17.26.070 of the Calabasas Municipal Code allows the City Council to approve an Oak Tree Permit provided that the following findings are made:

1. *The request to remove an oak tree or scrub oak habitat is warranted to enable reasonable and conforming use of the subject property, which would otherwise be prevented by the presence of the oak tree or scrub oak habitat. Reasonable use of the property shall be determined in accordance with the guidelines.*

The proposed project requires the removal of one heritage oak tree with a DBH of 28 inches and one non-heritage oak tree. The proposed structures have been located and designed to minimize impacts to as many oak trees on the site as feasible. The applicant has made a good faith effort to comply with all of the City's applicable development standards, but construction of the proposed development cannot occur without the removal of these trees. The two trees to be removed are the most centrally located of all the oak trees on the site. Fire access requirements and the required setback from McCoy Creek essentially force site development towards portions of the site where impacts to the oak trees are unavoidable. Removal of these trees and replanting of mitigation trees instead is warranted to provide a reasonable and conforming use of the subject property. Additionally, the replanting of mitigation trees can be designated to City owned park land. The City arborist has reviewed and approved the recommended mitigation measures. Given the circumstances, the project meets this finding.

2. *The request to alter or encroach within the protected zone of an oak tree or scrub oak habitat is warranted to enable reasonable and conforming use of the property, which would otherwise be prevented by the presence of the oak tree or scrub oak habitat. In addition, such alterations and encroachments can be performed without significant long-term adverse impacts to the oak tree or scrub oak habitat. Reasonable use of the property shall be determined in accordance with the guidelines.*

The Oak Tree Report indicates that encroachment activities involving trees No. 8, 9, and 10 will not result in significant long-term adverse impacts to the oak trees as long as the proper measures are taken during construction and grading. This conclusion has been confirmed by the City's Arborist. To further ensure that adverse impacts to the trees are minimized, the Oak Tree Report recommends a series of mitigation measures, which have been

included as project conditions of approval in the Resolution. Therefore, the project meets this finding.

Section 4. In view of all of the evidence and based on the foregoing findings and conclusions, the City Council approves File No. OAK-007-010 subject to the following agreements and conditions:

#### I. INDEMNIFICATION AGREEMENT

The City has determined that City, its employees, agents and officials should, to the fullest extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, expense, attorney fees, litigation expenses, court costs or any other costs arising out of or in any way related to the issuance of this Oak Tree Permit, or the activities conducted pursuant to this Oak Tree Permit. Accordingly, to the fullest extent permitted by law, Thomas Safran Associates shall defend, indemnify and hold harmless City, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, the issuance of this [permit], or the activities conducted pursuant to this Oak Tree Permit. Applicant shall pay such obligations as they are incurred by City, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the City reasonably determines necessary to protect the City from exposure to fees, costs or liability with respect to such claim or lawsuit.

#### II. CONDITIONS OF APPROVAL

##### Community Development Department / Consulting City Arborist

1. The applicant shall provide a 48-hour notice to the City and the applicant's oak tree consultant prior to the start of any approved work within the protected zone of and oak tree.
2. Prior to construction, all oak trees shall be fenced at the edge of the protected zone to the extent possible in accordance with the Oak Tree Preservation and Protection Guidelines.
3. All approved pruning shall be performed by a qualified arborist under the direction of the applicant's oak tree consultant. The arborist shall use the Pruning ANSI A300 Standards adopted by the Western Chapter of the International Society of Arboriculture. The same arborist shall, at the

direction of the City Arborist, remove the ivy that is growing into the branch structures of the oaks as recommended in the Oak Tree Report.

4. No construction materials, debris or vehicles shall be stored within the protected zone of any oak tree at any time.
5. Unless specifically approved by the City, no planting or irrigation shall be placed within the protected zone of any oak tree.
6. All future drainage shall be directed away from the drip line of oak trees. The area beneath the drip line shall remain dry at all times.
7. At the completion of construction, the applicant shall place three inches of approved mulch throughout the drip line of each oak tree.
8. Within ten (10) days of the completion of work, the applicant's oak tree consultant shall submit written certification to the Planning Division. This certification shall describe all work and whether such work was performed in accordance with the above permit conditions.
9. The oak removals shall be replaced on an inch for inch basis with at least 50% of the replacement trees *Quercus lobata* (Valley Oak).
10. The Oak Tree Consultant shall be on-site and monitoring the removal of any oak trees. Further, they should be present whenever any work is performed within the protected zone of any oak tree.
11. The precise line of a vertical cut must be staked by the surveyor before beginning excavation.
12. The first three feet of the excavation within the drip line of an oak must be dug by hand. No mechanical equipment can be used in the first 3' of excavation.
13. Roots encountered should be cut clean with a hand held pruning saw and treated with an appropriate fungicide. Roots should be cut at a 45 degree angle pointing downward. Do not seal the cut ends of the roots.
14. After reaching a depth of 3' mechanical equipment may be used to complete the excavation under the direct on site supervision of the Arborist who shall be present during all excavation within the drip line of any oak tree. No mechanical equipment that would conflict with the branch structure may be used. No pruning may be performed to accomplish the excavation.

Section 5. In view of all the evidence and based on the foregoing findings and conclusions, the City Council hereby approves OAK-007-010 to remove one heritage oak tree and one non-heritage oak tree and encroach into the protected zone of three non-heritage oak trees in order to construct a seventy-five unit affordable senior housing development for households earning between thirty and sixty percent of the Area Median Income, with a subterranean parking garage at 4803 El Canon Avenue, in the Commercial, Old Town (CT) zoning district.

The City Clerk shall certify to the adoption of this resolution and shall cause the same to be processed in the manner required by law.

**PASSED, APPROVED AND ADOPTED** this 16th day of January, 2008.

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James Bozajian, Mayor

ATTEST:

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Gwen Peirce, Assistant City Clerk

APPROVED AS TO FORM:

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Michael G. Colantuono, City Attorney