

P.C. RESOLUTION NO. 2021-725

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS APPROVING CUP NO. 2021-003, A REQUEST FOR A CONDITIONAL USE PERMIT FOR A TYPE-47 ON-SALE GENERAL LICENSE FROM THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL TO ALLOW FOR THE ONSITE CONSUMPTION OF BEER, WINE AND SPIRITS IN CONJUNCTION WITH THE EXISTING RESTAURANT, BARNEY'S, LOCATED AT 4776 COMMONS WAY, SUITE D (APN: 2068-003-023) WITHIN THE COMMERCIAL, MIXED USE (CMU) ZONING DISTRICT.

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

1. Agenda report prepared by the Community Development Department.
2. Staff presentation at the public hearing held on June 17, 2021 before the Planning Commission.
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.

Section 2. Based on the foregoing evidence, the Planning Commission finds that:

1. The applicant submitted an application and plans for Conditional Use Permit No. 2021-003 on April 14, 2021.
2. The project application and plans were reviewed by the Development Review Committee on May 4, 2021.

3. On May 12, 2021 the application was deemed complete and the applicant was notified.
4. Notice of the June 17, 2021 Planning Commission public hearing was posted at Gelson's market, Juan Bautista de Anza Park, Calabasas Tennis and Swim Center and at Calabasas City Hall.
5. Notice of the June 17, 2021 Planning Commission public hearing was provided to property owners within 500 feet of the property as shown on the latest equalized assessment roll.
6. Notice of the June 17, 2021 Planning Commission public hearing was mailed or delivered at least ten (10) days prior to the hearing to the project applicant.
7. Notice of the June 17, 2021 Planning Commission public hearing included the notice requirements set forth in Government Code Section 65009 (b)(2).
8. A noticed public hearing was held by the Planning Commission on June 17, 2021.
9. The project site is currently zoned Commercial, Mixed Use (CMU).
10. The land use designation for the project site under the City's adopted General Plan is Mixed Use (MU).
11. Properties surrounding the project site are zoned (CMU), Commercial Retail (CR) and Commercial Old Town (CT) have General Plan land use designations of Mixed Use (MU), Business Retail (B-R) and Business Old Town (B-OT).

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

FINDINGS

Section 17.62.060 Calabasas Municipal Code allows the review authority to approve a Conditional Use Permit provided that the following findings are made:

1. *The proposed use is conditionally permitted within the subject zoning district and complies with all of the applicable provisions of this development code;*

The sale of alcoholic beverages in conjunction with a restaurant use is allowed in the Commercial, Mixed Use (CMU) zones with a Conditional Use Permit, per Section 17.11.010 of the Land Use and Development Code. Therefore, the proposed project meets this finding.

2. *The proposed use is consistent with the General Plan and any applicable specific plan or master plan;*

The proposed beer, wine, and spirits sales in conjunction with the operation of a new restaurant is consistent with the City of Calabasas General Plan because it contributes to the "...mix of retail and service commercial, office and business park areas that: meet the retail service needs of Calabasas citizens; contribute to a sound local economy..."(Policy II-11). For this reason, the request for a Conditional Use Permit for beer, wine, and spirits sales meets this finding.

3. *The approval of the conditional use permit for the proposed use is in compliance with the California Environmental Quality Act (CEQA);*

The project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the California CEQA Guidelines, which exempts licensing of existing public or private structures as well as minor alterations to existing structures. The project is also exempt per Section 15061(b)(3) because the proposed alterations will not have an effect on the environment.

4. *The location and operating characteristics of the proposed use are compatible with the existing and anticipated future land uses in the vicinity.*

The location and operating characteristics of the requested conditional use permit, with the limitations described in the conditions attached, are compatible with the existing and anticipated future land uses in this area of the City because all activities associated with the establishment and operation of a new restaurant, including the serving of beer, wine and distilled spirits in conjunction with a Type-47 license issued by the State Department of Alcoholic Beverage Control (ABC), will take place entirely in conjunction with the leased tenant space of an existing business that was previously established and operated as a restaurant, and is required to adhere to all requirements of the State ABC Type-47 license.

Furthermore, the subject site is located within an existing commercial shopping center, which contains a number of different types of commercial services, including restaurants that also serve alcoholic beverages.

Section 4. In view of all of the evidence and based on the foregoing findings and conclusions, the Planning Commission approves Conditional Use Permit No. 2021-003 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 Conditional Use Permit, or the activities conducted pursuant to this Conditional Use Permit. Accordingly, to the fullest extent permitted by law, Barney's Gourmet Hamburgers, and its representative(s), or its successors shall defend, indemnify and hold harmless the 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 Conditional Use Permit, or the activities conducted pursuant to this Conditional Use Permit. Barney's Gourmet Hamburgers, and its representative(s), or its successors 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

Planning Division

1. The proposed project shall be built in compliance with the approved plans on file with the Planning Division.
2. The project approved herein is depicted on those sets of drawings, elevations, etc., stamped approved by staff on the approval date. Any modifications to these plans must be approved by the Department of Community Development staff prior to the changes on the working drawings or in the field. Changes considered substantial by the Planning staff must be reviewed by the Planning Commission. The determination of whether or not a change is substantial shall be made by the Director of Community Development.

Prior to issuance of grading or building permits, plans shall be reviewed by the Department of Community Development to ensure compliance with the plans approved by the Planning Commission. The plans shall comply with the conditions contained herein, the Calabasas Municipal Code, and all City Resolutions and Ordinances.

3. The subject property shall be developed, maintained, and operated in full compliance with the conditions of this grant and any law, statute, ordinance or other regulation applicable to any development or activity on the subject property. Failure of the applicant or its successors to cease any development or activity not

in full compliance shall be a violation of these conditions. Any violation of the conditions of approval may result in the revocation of this approval.

4. This approval shall be valid for one year and eleven days from the date of adoption of the resolution. The permit may be extended in accordance with Title 17 Land Use and Development Code, Article VI - Land Use and Development Permits.
5. All exterior lights are subject to the provisions set forth in the Lighting Ordinance Chapter 17.27 of the Land Use and Development Code. Lighting of 60 watts or less on residential projects is exempt by the Lighting Ordinance. Any modifications (i.e. adding new lighting fixtures and/or upgrading existing lighting fixtures) to the existing exterior lighting will require the submittal of a lighting and photometric plan to the Community Development Director for review and approval prior to installation.
6. Prior to commencement of construction, all necessary building permits must be obtained from the Building and Safety Division.
7. The project must comply with the building codes in effect at this time, which include the "2019" California Building, Plumbing, Mechanical, and Electrical codes as amended by Chapter 15.04 of the Municipal Code.
8. The project is located within a designated A Very High Fire Hazard Severity Zone. The requirements of Chapter 15.04.900 of the Calabasas Municipal Code that references the 2010 California Fire Code as well as the 2010 Consolidated Fire Protection District Code of Los Angeles County, must be incorporated into all plans.
9. The applicant shall provide the construction contractor(s) and each subcontractor related to the project a copy of the final project Conditions of Approval. The applicant and the City agree that these conditions shall be enforceable through all legal and equitable remedies, including the imposition of fines against each and every person who conducts any activity on behalf of the applicant on or near the project site. The applicant, property owner, and general construction contractor are ultimately responsible for all actions or omissions of a subcontractor.
10. Construction Activities - Hours of construction activity shall be governed by the Municipal Code and the Building Official;
 - i. 7:00 a.m. to 5:00 p.m., Monday through Friday
 - ii. 8:00 a.m. to 5:00 p.m., Saturday

Stacking of construction worker vehicles, prior to 7:00 a.m. in the morning will be restricted to areas that do not adversely affect adjacent residences or schools.

No vehicles involved in construction of this project shall block the roadway at any time. The applicant or its successors shall notify the director of Transportation and Intergovernmental Relations of the construction employee parking locations, prior to commencement of construction.

11. This Conditional Use Permit may be transferred to a subsequent owner/lessee provided that the operation is a similar type and provided that the owner/lessee agrees to abide by all of the conditions and restrictions of the original Conditional Use Permit. Any transfer of ownership is subject to review by the Planning/Building Department under the zoning clearance process.
12. Beer, wine, and spirits sales shall be limited to the hours of 10:30am until 1:00am Monday through Sunday, unless more restrictive hours are established by the State of California Department of Alcoholic Beverage Control (ABC), in which case, those hours would apply.
13. Alcoholic beverages may be sold for on-premise consumption only, and consumption of alcohol shall be confined to the premises.
14. The restaurant shall comply with all requirements of the State of California Department of Alcoholic Beverage Control (ABC) and the County of Los Angeles Sheriff's Department.
15. All current and future tenants/owners shall accept the conditions of this Conditional Use Permit by executing the Affidavit of Acceptance provided by the City Planning Department prior to commencement of alcoholic beverage sales. Applicant shall have this resolution recorded with the Los Angeles County Recorder's Office, and a certified copy of the recorded document shall be filed with the Community Development Department.
16. The City reserves the right to further review of the Conditional Use Permit and conditions of approval should complaints be received from adjacent residents/tenants or should the number of incidents reported to the Sheriff's Department exceed the number expected in this type of development.

Section 5. All documents described in Section 1 of PC Resolution No. 2021-725 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 2021-725 PASSED,
APPROVED AND ADOPTED this 17th day of June, 2021.

Wendy Fassberg,
Chairperson

ATTEST:

Maureen Tamuri,
Community Development Director

APPROVED AS TO FORM:

Matt Summers
Assistant City Attorney

Planning Commission Resolution No. 2021-725, was adopted by the Planning Commission at a regular meeting held June 17, 2021, and that it was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

“The Secretary of the Planning Commission shall certify the adoption of this Resolution, and transmit copies of this Resolution to the applicant along with proof of mailing in the form required by law and enter a copy of this Resolution in the book of Resolutions of the Planning Commission. Section 1094.6 of the Civil Code of Procedure governs the time in which judicial review of this decision may be sought.”