

P.C. RESOLUTION NO. 2021-735

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS APPROVING CONDITIONAL USE PERMIT NO. CUP-2021-001 AND ZONING CLEARANCE PERMIT NO. ZCL-2021-138, A REQUEST FOR A CONDITIONAL USE PERMIT AND ZONING CLEARANCE PERMIT TO ALLOW FOR THE SALE OF BEER AND WINE FOR ON-SITE CONSUMPTION VIA A TYPE 41 LIQUOR LICENSE FROM THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, THE INSTALLATION OF A NEW RAILING AROUND THE EXISTING OUTDOOR SEATING AREA, AND THE OPERATION OF A NEW INDOOR RESTAURANT WITHIN THE EXISTING GELSON'S MARKET LOCATED AT 22277 MULHOLLAND HWY (APN: 2078-009-022), WITHIN THE COMMERCIAL RETAIL (CR) ZONING DISTRICT AND SCENIC CORRIDOR (-SC) OVERLAY ZONE.

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 December 2, 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. CUP-2021-001 on January 5, 2021.
2. The project application and plans were reviewed by the Development Review Committee on January 26, 2021.
3. On June 14, 2021, the applicant submitted an application for Zoning Clearance Permit No. ZCL-2021-138 for the operation of a new restaurant within Gelson's.
4. On November 17, 2021, the application was deemed complete and the applicant was notified.
5. Notice of the December 2, 2021 Planning Commission public hearing was posted at Gelson's market, Juan Bautista De Anza Park, the Calabasas Tennis and Swim Center, and at Calabasas City Hall.
6. Notice of the December 2, 2021 Planning Commission public hearing was provided to property owners within 500 feet of the property as shown on the latest equalized assessment roll.
7. Notice of the December 2, 2021 Planning Commission public hearing was mailed or delivered at least ten (10) days prior to the hearing to the project applicant.
8. Notice of the December 2, 2021 Planning Commission public hearing included the notice requirements set forth in Government Code Section 65009 (b)(2).
9. A noticed public hearing was held by the Planning Commission on December 2, 2021.
10. The project site is currently zoned Commercial, Retail (CR).
11. The land use designation for the project site under the City's adopted General Plan is Business, Retail (B-R).
12. Properties surrounding the project site are zoned Commercial, Retail (CR), Residential, Multi-Family (RM) and Residential, Single Family (RS) and have General Plan land use designations of Business Retail (B-R), Residential-Multiple Family (R-MF(16)), and Residential- Single Family (R-SF).

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 and on-site consumption of alcoholic beverages in conjunction with the operation of a new restaurant within Gelson's market lease area is allowed in the Commercial, Retail (CR) zoning district with a Conditional Use Permit, per Section 17.11.010 of the Land Use and Development Code. Additionally, per Section 17.12.035(D), sales must be conducted in compliance with the Alcoholic Beverage Control Act of the State of California. The proposed new restaurant and alcoholic beverage sales will comply with all applicable state laws and requirements of the State Department of Alcoholic Beverage Control (ABC). 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 sales and on-site consumption of beer and wine in conjunction with the operation of a new restaurant within the existing Gelson's market 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 economic base..."(Policy II-11). Because the new restaurant and associated alcohol sales will occur as part of an existing grocery store, the primary use of the subject site will not change. For this reason, the request for a Conditional Use Permit for beer and wine 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. The project is also exempt per Section 15061(b)(3) because the new restaurant is within an existing grocery store, and the only exterior alteration proposed is the installation of a new railing around an existing outdoor seating area, and will not have an effect on the environment. Therefore, the proposed project meets this finding.

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. All activities associated with the operation of the existing market and proposed restaurant within the market's lease area, including the sale and on-site consumption of beer and wine via a Type 41 license issued by the State Department of Alcoholic Beverage Control (ABC), will take place entirely within the existing grocery store and its existing outdoor seating area. The existing site is currently operated as a retail supermarket, which has been in operation since 1995 with a Type 21 license from the Dept of ABC for off-site consumption of alcoholic beverages, approved via PC Resolution No. 95-08. Additionally, the market has offered on-site instructional tastings since 2011 via a Type 86 license from the Dept of ABC, approved via PC Resolution No. 11-515. Gelson's has remained a responsible operator of its Type 21 and Type 86 liquor license since the date they were initially issued. Due to the fact that the market already possesses liquor licenses for the sale and off-site consumption of alcohol, as well as alcohol tasting, the sale and on-site consumption of beer and wine is compatible with the existing and future land uses of commercial retail uses in the vicinity. Therefore, the proposed project meets this finding.

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. CUP-2021-001 and ZCL-2021-138 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 this File No(s). CUP-2021-001 and ZCL-2021-138, and the issuance of any permit or entitlement in connection therewith, or the activities conducted pursuant to this File No(s). CUP-2021-001 and ZCL-2021-138, and the issuance of any permit or entitlement in connection therewith. Accordingly, to the fullest extent permitted by law, Gelson's Markets (applicant) and GVC Holdings LLC (owners) and their successors 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, related to this File No(s). CUP-2021-001 and ZCL-2021-138 and the issuance of any permit or entitlement in connection therewith, or the activities conducted pursuant to this File No(s). CUP-2021-001 and ZCL-2021-138 and the issuance of any permit or entitlement in connection therewith.

Gelson's Markets (applicant) and GVS Holdings LLC (owners) and their 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. Prior to commencement of construction, all necessary building permits must be obtained from the Building and Safety Division.
6. 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.
7. The project is located within a designated A Very High Fire Hazard Severity Zone. The requirements of Chapter 15.04.500 of the Calabasas Municipal Code that

references the 2019 California Fire Code as well as the 2019 Consolidated Fire Protection District Code of Los Angeles County, must be incorporated into all plans.

8. 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.
9. Construction Activities - Hours of construction activity shall be limited to:
 - i. 7:00 a.m. to 6:00 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.

10. 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.
11. Alcohol sales shall be limited to the hours established by the State of California Department of Alcoholic Beverage Control (ABC).
12. Alcoholic beverages sold for on-site consumption shall be sold in association with the on-site restaurant, within the designated restaurant area.
13. The operation of the restaurant within Gelson's Market 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.
14. All current and future tenants/owners shall accept the conditions of this Conditional Use Permit and Zoning Clearance 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.

15. 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. 2021-735 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 2021-735 PASSED, APPROVED AND ADOPTED this 2nd day of December, 2021.

Wendy Fassberg,
Chairperson

ATTEST:

Maureen Tamuri, AIA, AICP,
Community Development Director

APPROVED AS TO FORM:

Matthew Summers
City Attorney

Planning Commission Resolution No. 2021-735, was adopted by the Planning Commission at a regular meeting held December 2, 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.”