

PLANNING COMMISSION RESOLUTION NO. 2023-751

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS TO APPROVE FILE NO(S). VAR-2023-001 AND ZCL-2023-033, A REQUEST FOR A VARIANCE AND A ZONING CLEARANCE PERMIT TO CONSTRUCT A 13' MAXIMUM HEIGHT RETAINING WALL AND ASSOCIATED SAFETY FENCING FOR THE PURPOSE OF SLOPE STABILIZATION ON A VACANT HOA-OWNED PARCEL LOCATED AT 25424 PRADO DE AZUL (APN: 2069-100-058) WITHIN THE RESIDENTIAL, SINGLE-FAMILY (RS) 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 reports prepared by the Community Development Department.
2. Staff presentation at the public hearing held on April 6, 2023, 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. On February 3, 2023, the applicant submitted an application for File No. VAR-2023-001 and ZCL-2023-033.
2. The project was reviewed by the Development Review Committee (DRC) on February 24, 2023.
3. Staff determined that the application was incomplete on March 2, 2023 and the applicant was duly notified of this incomplete status.
4. Plans were revised and resubmitted by the applicant on March 3, 2023.
5. The resubmitted application and plans were deemed complete by Staff on March 23, 2023.
6. Notice of the April 6, 2023 Planning Commission public hearing was posted at Juan de Anza Park, the Calabasas Tennis and Swim Center, and at Calabasas City Hall.
7. Notice of the April 6, 2023 Planning Commission public hearing was provided to property owners within 500 feet of the property as shown on the latest equalized assessment roll.
8. Notice of the April 6, 2023 Planning Commission public hearing was mailed or delivered at least ten (10) days prior to the hearing to the project applicant.
9. Notice of the April 6, 2023 Planning Commission public hearing included the notice requirements set forth in Government Code Section 65009 (b)(2).
10. A public hearing was held at the April 6, 2023 Planning Commission meeting, during which public testimony was taken.
11. At the April 6, 2023 meeting, the Commissioners recommended 5-0 that Staff prepare a resolution of approval for File No(s). VAR-2023-001 and ZCL-2023-033, to be brought back to the Commission for approval at the next regularly scheduled Planning Commission meeting.
12. The project site is zoned Residential, Single-Family (RS).
13. The land use designation for the project site under the City's adopted General Plan is Residential-Single Family (R-SF).

14. Properties surrounding the project site are zoned RS and OS-DR, and have General Plan land use designations of R-SF and OS-RP.

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

FINDINGS

Section 17.62.080(E) of the Calabasas Municipal Code (CMC) allows the Planning Commission to approve a **Variance** provided that the following findings are made:

1. *That there are special circumstances applicable to the property which do not generally apply to other properties in the same zoning district (i.e., size, shape, topography, location or surroundings), such that the strict application of this chapter denies the property owner privileges enjoyed by other property owners in the vicinity and in identical zoning districts;*

The RS-zoned subject property exists as an open space buffer on the outer perimeter of the Oaks of Calabasas residential subdivision, and the lot is highly irregular in shape. The property is further compromised by extremely steep slopes, which in most cases are 3:2 (horizontal distance to vertical), or steeper. The excessively steep slopes greatly limit options for slope repairs without use of tall retaining walls. Repetitive heavy rains over the winter months, coupled with the extreme steepness of the slope, resulted in a slope failure, with substantial erosion of material occurring along the north property line. The erosion was so severe that it damaged the rear yards of several adjoining residential properties (in particular APN 2069-100-035 and APN 2069-100-034), which are also zoned Residential Single-family, or RS. The erosion and associated slope failure has created a public safety hazard that must be addressed via a slope repair. Strict application of chapter 17.20.100 of the CMC would prevent the homeowners' association (the property owner) from being able to carry out the HOA's duties to maintain the subject property in good repair. Also, without a repair to the slope failure, erosion and associated damage would continue over time, resulting in further diminishment of property rights enjoyed by the neighboring residential properties. Accordingly, without repairing the slope with the proposed 13-foot tall retaining wall, the property owner and the owners of the two adjoining residential properties would be denied privileges enjoyed by other property owners in the vicinity and in the same zoning district.

2. *That granting the variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district and denied to the property owner for which the variance is sought;*

The proposed retaining wall is essential to eliminating the safety hazard to the adjacent properties, as well as to afford the subject property owner (the HOA) the means of continuing to carry out its obligation to maintain the property in good repair. As such, the proposed retaining wall will re-establish slope stability and protect public safety on the subject property, and on the two adjacent properties. Therefore, granting the variance to allow for construction of a 13-foot tall retaining wall for slope stabilization will preserve, and allow for ongoing enjoyment of, substantial property rights possessed by other property owners in the immediate vicinity and the same zoning district.

3. *That granting the variance would not constitute the granting of a special privilege inconsistent with the limitations of other properties in the same zoning district;*

Granting the variance will allow the property owner to stabilize the existing failed slope. The slope repair, to include in particular the 13-foot tall retaining wall, would not constitute the granting of a special privilege inconsistent with the limitations of other properties in the same zoning district because the proposed retaining wall would not result in any additional usable lot area or allow for additional buildings or building space. Therefore, the proposed project meets this finding.

4. *That granting the variance will not be detrimental to the public health, safety or welfare, or injurious to property or improvements in the vicinity and zoning district in which the property is located; and*

The proposed retaining wall and associated slope reconstruction and drainage improvements will re-establish slope stability and protect public safety on the subject property, as well as on the two adjacent properties. Accordingly, public health, safety and welfare will be enhanced by the project, and the project will not be injurious to property or improvements in the vicinity and zoning district in which the property is located.

5. *That granting the variance is consistent with the General Plan and any applicable specific plan.*

Construction of the retaining wall will not change or intensify the land uses of the subject property or the adjoining residential properties; therefore, the project is consistent with the Land Use Element of the General Plan. Furthermore, the project will eliminate a public safety hazard; therefore, granting of the variance is consistent with the Safety Element of the General Plan, which states as one principal objective that the potential for loss of life, physical injury, property damage, and social disruption resulting from seismic ground shaking and other geologic events are to be minimized. The subject property is not located in an area subject to a specific plan.

Section 4. In view of all of the evidence and based on the foregoing findings and conclusions, the Planning Commission approves File No(s). VAR-2023-001 and ZCL-2023-033 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 File No(s). VAR-2023-001 and ZCL-2023-033, or the activities conducted pursuant to this File No(s). VAR-2023-001 and ZCL-2023-033. Accordingly, to the fullest extent permitted by law, the applicant and property owner, and their successor and assigns, 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 File No(s). VAR-2023-001 and ZCL-2023-033, or the activities conducted pursuant to File No(s). VAR-2023-001 and ZCL-2023-033. The applicant and property owner, and their successor and assigns, 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/Planning/Building and Safety

1. The proposed project shall be built in compliance with the approved plans on file with the Planning Division.
2. All project conditions shall be imprinted on the title sheet of the construction drawings. The approved set of plans shall be retained on-site for the review of Building Inspectors. Prior to any use of the project site, all conditions of approval shall be completed to the satisfaction of the Director of Community Development.
3. 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.
4. Prior to issuance of grading or building permits, plans shall be reviewed and approved 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.
5. 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.
6. This grant shall not be effective for any purposes until after the applicant, or its successors, and the owner of the property involved (if other than the applicant) have recorded an affidavit of acceptance of this resolution with the Los Angeles County Recorder's Office, and a certified copy of the recorded document is filed with the Community Development Department.
7. 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.

8. All ground and roof-mounted equipment is required to be fully screened from view. Upon final inspection, Planning Division staff may require additional screening if warranted, through either landscaping, walls or a combination thereof.
9. All exterior lights are subject to the provisions set forth in the Lighting Ordinance Chapter 17.20 of the Land Use and Development Code.
10. Prior to commencement of construction, all necessary building permits must be obtained from the Building and Safety Division.
11. The project must comply with the building codes of Title 15.04 of the CMC at the time of building plan check submittal.
12. The project is located within a designated Very High Fire Hazard Severity Zone. The requirements of Chapter 15.04.900 of the CMC shall be incorporated into all plans.
13. 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.
14. Construction Activities - Hours of construction activity shall be limited to:

7:00 a.m. to 6:00 p.m., Monday through Friday

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.

15. The proposed concrete retaining wall shall be colored in an earth-tone manner to better blend with the surrounding natural environment.

Public Works Department/Environmental Services Division

16. During the term of the City permit, the contractor, their employees, and subcontractors shall implement appropriate Best Management Practices (BMPs) to prevent pollution to local storm drains and waterways. Sediments, construction debris, paint, trash, concrete truck wash water and other chemical waste from construction sites left on the ground and streets unprotected, or washed into storm drains, causes pollution in local waterways via the storm drain system is against City ordinances and State laws. The BMPs implemented shall be consistent with City of Calabasas Municipal Code Chapters 8.28. Failure to implement appropriate BMPs shall result in project delays through City issued "Stop Work Notices" and/or fines levied against the owner/developer/contractor.
17. The applicant and contractors shall implement all reasonable efforts to reuse and recycle 75% of construction and demolition debris, to use environmentally friendly materials, and to provide energy efficient buildings, equipment, and systems.
18. Per the Calabasas Municipal Code Chapter 8.16, "no person shall collect and/or dispose of municipal solid waste or recyclable materials in the city without having first been issued a solid waste collection permit. Such permit shall be in addition to any business license or permit otherwise required by the City of Calabasas." The following companies and the only trash haulers authorized to operate in the City of Calabasas: American Reclamation (1-888-999-9330), Consolidated Disposal Service (1-800-299-4898), Recology (1-800-633-9933), Universal Waste Systems (1-800-631-7016), Waste Management/G.I. Industries (1-800-675-1171). An Encroachment Permit from the City Public Works Department is required prior to placing a refuse bin/container on any public street.

Los Angeles County Fire Department

19. Obtain any applicable permits and approvals from the Los Angeles County Fire Department.

Section 5. All documents described in Section 1 of PC Resolution No. 2023-751 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 2023-751 PASSED,
APPROVED AND ADOPTED this 20th day of April, 2023.

Michael Harrison
Chairperson

ATTEST:

Michael Klein, AICP
Community Development Director

APPROVED AS TO FORM:

Matthew Summers
Colantuono, Highsmith and Whatley, PC
City Attorney

Planning Commission Resolution No. 2023-751, was adopted by the Planning Commission at a regular meeting held April 20, 2023 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.”