

PLANNING COMMISSION RESOLUTION NO. 2023-752

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS TO APPROVE FILE NO(S). APR-2023-002 AND CUP-2023-001, A REQUEST FOR A CONDITIONAL USE PERMIT AND ADMINISTRATIVE PLAN REVIEW FOR LIVE MUSIC AND THE INSTALLATION OF PERMANENT OUTDOOR DÉCOR AND FAUX FOLIAGE FOR ROSE'S GARDEN BAR, LOCATED AT 26787 AGOURA RD E1 (APN: 2064-021-017 & 2064-021-018) 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 reports prepared by the Community Development Department.
2. Staff presentation at the public hearing held on April 20, 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 2, 2023, the applicant submitted an application for File No(s). APR-2023-002 and CUP-2023-001.
2. The project was reviewed by the Development Review Committee (DRC) on February 17, 2023, and by the City's Architectural Review Panel (ARP) on March 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 15, 2023.
5. The resubmitted application and plans were deemed complete by Staff on April 5, 2023.
6. Notice of the April 20, 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 20, 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 20, 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 20, 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 20, 2023 Planning Commission meeting, during which public testimony was taken.
11. At the April 20, 2023 meeting, the Commissioners recommended 5-0 that Staff prepare a resolution of approval for File No(s). APR-2023-002 and CUP-2023-001, to be brought back to the Commission for approval at the next regularly scheduled Planning Commission meeting.
12. The project site is zoned Commercial Retail (CR), and is within the Scenic Corridor (-SC) overlay zone.

13. The land use designation for the project site under the City's adopted General Plan is Business- Retail (B-R).
14. Properties surrounding the project site are zoned CB and CMU, and have General Plan land use designations of B-BP and MU 0.6.

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

FINDINGS

Section 17.62.060(E) of the Calabasas Municipal Code (CMC) allows the Planning Commission 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 applicant is proposing unamplified live music and exterior décor within an existing outdoor covered patio area located at 26787 Agoura Rd., Suite E1, within the Commercial Retail (CR) zoning district. The proposed live music and exterior patio décor will augment an existing restaurant use at the subject location; the restaurant use was previously permitted for the location and the subject proposal will not alter this primary use. Per Section 17.11.010 of the Calabasas Municipal Code (CMC), live entertainment is conditionally permitted in the CR zoning district, and the CMC does not provide additional specific standards for live music. The proposed live music area and décor comply with all applicable provisions of the development code, and the live music will not be amplified. 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 General Plan land use designation for the subject site is Business – Retail (B-R). A restaurant within a shopping center is an anticipated use within this land use designation, and the live music associated with the restaurant is conditionally permitted in the CR zoning district. Furthermore, the proposed live music 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). For these reasons, the request for a conditional use permit for live music meets this finding.

3. *Approval of the conditional use permit for the proposed use complies with the California Environmental Quality Act (CEQA).*

The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, which exempts interior or exterior alterations of existing structures. The project is also exempt per Section 15061(b)(3) because the new décor and unamplified live music area are accessory aspects of an existing restaurant use and are located within an existing covered patio area, with no foreseeable negative effects 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 proposed new exterior décor is purely cosmetic and do not affect or alter the existing restaurant use. The proposed live music area is located in an outdoor patio area of an existing and permitted restaurant use within an existing commercial shopping center, and the proposed use would complement other restaurant uses and retail stores in the shopping center. Additional land uses at surrounding properties include office buildings and a university campus. Proposed live music will occur no later than 10:00 p.m., and music will not be amplified. Additionally, the nearest residences are approximately 700 feet away from the live music area, and no schools, libraries, or other noise-sensitive land uses are located closer than 1,500 feet. Therefore, the location and operating characteristics of the live music are compatible with the existing and future land uses in the vicinity, and the proposed project meets this finding.

Section 17.62.090(E) of the Calabasas Municipal Code (CMC) allows the Planning Commission to approve an **Administrative Plan Review Permit** provided that the following findings are made:

1. *The proposed project complies with all applicable provisions of this development code;*

The subject site is located at 26787 Agoura Rd., Suite E1, within the Commercial Retail (CR) zoning district. The existing restaurant (Rose's Garden Bar) and associated covered patio area are located within a

commercial shopping center at the intersection of Lost Hills Rd. and Agoura Rd., comprised of five buildings totaling 70,433 square feet. The proposed live music and exterior patio décor will augment the existing restaurant use, which was previously permitted for the location. Per Section 17.11.010 of the Calabasas Municipal Code (CMC), live entertainment is conditionally permitted in the CR zoning district, and the CMC does not provide additional specific standards for live music. The proposed project does not increase the height above the height of the existing covered patio, and does not impact the site coverage percentage, setbacks, or pervious surface percentage of the property. Accordingly, the proposed live music area and décor comply with all applicable provisions of the Land Use and Development Code, and the proposed project meets this finding.

2. *The proposed project is consistent with the General Plan, any applicable specific plan, and any special design theme adopted by the city for the site and vicinity;*

The land use designation for the subject site is Business – Retail (B-R). The existing land use of the subject site is a commercial shopping center, and the proposed exterior décor within an existing outdoor dining area does not change the land use of the subject site. Additionally, while the subject site is located within the designated 101 Freeway scenic corridor, the area of work within the shopping center is not visible from the freeway and no scenic corridor permit was required. Furthermore, the proposed exterior décor within an existing outdoor dining area 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). For these reasons, the proposed project meets this finding.

3. *Approval of the administrative plan review complies with the California Environmental Quality Act (CEQA);*

The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the California CEQA Guidelines, which exempts interior or exterior alterations of existing structures. The project is also exempt per Section 15061(b)(3) because the new décor and unamplified live music area are located within an existing covered patio area, and will not have an effect on the environment. Therefore, the proposed project meets this finding.

4. *The proposed structures, signs, site development, grading and/or*

landscaping are compatible in design, appearance and scale, with existing uses, development, signs, structures and landscaping for the surrounding area;

The proposed project is located within an existing commercial shopping center at the intersection of Lost Hills Rd. and Agoura Rd. The shopping center is comprised of five buildings totaling 70,433 square feet. The proposed project includes installation of décor and faux foliage within an existing outdoor dining area for Rose's Garden Bar, located at 26787 Agoura Rd E1. The project does not increase the height above the height of the existing patio cover, and does not impact the site coverage percentage, setbacks, or pervious surface percentage of the property. The Architectural Review Panel recommended approval of the proposed exterior décor and faux foliage on March 24, 2023. Therefore, the proposed project is compatible in use, design, scale, and appearance with the surroundings and meets this finding.

5. *The site is adequate in size and shape to accommodate the proposed structures, yards, walls, fences, parking, landscaping, and other development features; and*

The City's Land Use and Development Code contains development standards for setbacks, height limits, and site coverage for the CR zone to ensure that development is adequately proportional to the size of the property. Compliance with these standards is required for project approval. The subject site is improved with an existing 70,433 square-foot shopping center, and the proposed area of work is located within an existing covered patio area. Because the covered patio is existing and the current scope of work is limited to the installation of permanent exterior décor within the existing covered outdoor dining area, the proposed project will not alter the existing setbacks, height, site coverage, or pervious surface at the subject site. Therefore, the proposed project meets this finding.

6. *The proposed project is designed to respect and integrate with the existing surrounding natural environment to the maximum extent feasible.*

The proposed project is designed to respect and integrate with the existing buildings and environment to the maximum extent feasible because the existing covered patio area is located adjacent to a restaurant within a commercial shopping center, and the proposed exterior décor and faux foliage will be installed within the existing dining area and along the perimeter of the existing patio cover and handrail. Because the area

of work is not visible from the Scenic Corridor, the proposed décor will not impact any viewshed. Additionally, the Architectural Review Panel recommended approval of the project. Given these circumstances, 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 File No(s). APR-2023-002 and CUP-2023-001 subject to the following agreement 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). APR-2023-002 and CUP-2023-001, or the activities conducted pursuant to this File No(s). APR-2023-002 and CUP-2023-001. 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). APR-2023-002 and CUP-2023-001, or the activities conducted pursuant to File No(s). APR-2023-002 and CUP-2023-001. 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. 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.

16. 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. 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.
17. 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.
18. Outdoor live music shall not be amplified, unless otherwise permitted via a Temporary Use Permit for special events, subject to approval by the Community Development Director.
19. Hours of operation for live music shall be no later than 10:00 p.m.

Public Works Department/Environmental Services Division

20. 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.
21. 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.
22. 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

23. 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. 2023-752 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 2023-752 PASSED,
APPROVED AND ADOPTED this 4th day of May, 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. 2023-752, 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.”