

P.C. RESOLUTION NO. 2023-759

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS APPROVING CONDITIONAL USE PERMIT NO. CUP-2023-006, A REQUEST FOR A CUP TO ALLOW FOR THE SALE AND OFF-SITE CONSUMPTION OF BEER, WINE, AND SPIRITS VIA A TYPE 21 LIQUOR LICENSE FROM THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL FOR THE EXISTING GAS STATION LOCATED AT 4807 LAS VIRGENES (APN: 2064-002-048), 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 September 21, 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. The applicant submitted an application and plans for Conditional Use Permit No. CUP-2023-006 on June 9, 2023.
2. The project application and plans were reviewed by the Development Review Committee on June 15, 2023.

3. On August 8, 2023, the application was deemed complete and the applicant was notified.
4. Notice of the September 21, 2023 Planning Commission public hearing was posted at Juan Bautista De Anza Park, the Calabasas Tennis and Swim Center, and at Calabasas City Hall.
5. Notice of the September 21, 2023 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 September 21, 2023 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 September 21, 2023 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 September 21, 2023.
9. At the September 21st, 2023 meeting, the Commissioners recommended that Staff prepare a resolution of approval for File No. CUP-2023-006, to be brought back to the Commission for adoption at the next regularly scheduled Planning Commission meeting.
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 is Business, Retail (B-R).
12. Properties surrounding the project site are zoned Commercial Retail (CR) and have General Plan land use designations of Business Retail (B-R).

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 the operation of a convenience market 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), less than twenty-five (25) percent of the sales floor shall be devoted to the display of alcoholic beverages. The applicant is proposing to have only 2.7% of the sales floor devoted to alcoholic beverages. 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 the existing convenience store and gas station 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). The exterior of the existing building is not changing in layout or design, nor is the primary convenience store use changing. 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 Categorically 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 extent of the alterations are only to the interior sales displays, and will not have an effect on the environment. Therefore, this finding is met.

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 operation of the existing convenience store, including the sale of beer, wine, and spirits in conjunction with a Type 21 license issued by the State Department of Alcoholic Beverage Control (ABC), will take place entirely within the interior tenant space of an existing structure that is currently operated as a convenience store and gas

station, and is required to adhere to all requirements of the State ABC Type-21 license.

Furthermore, the subject site is located within a commercial corridor along Las Virgenes Road, which contains a number of different types of commercial services, including convenience and liquor stores in the vicinity that also sell alcohol via a Type 20 and Type 21 liquor license. Since surrounding land uses include a gasoline service station, auto sales and maintenance services, and other retail uses, the location and operating characteristics of the existing convenience store, including the sales of beer, wine, and spirits for off site consumption, are compatible with the existing and future land uses of commercial retail uses in the vicinity. Additionally, beer and wine are already sold at this location via a Type 20 alcohol license, and the applicant's request to also sell spirits via a Type 21 license is consistent with other convenience stores in the City. 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-2023-006 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. CUP-2023-006, or the activities conducted pursuant to File No. CUP-2023-006. Accordingly, to the fullest extent permitted by law, the applicant and property owner, and their successors 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. CUP-2023-006, or the activities conducted pursuant to File No. CUP-2023-006. The applicant and property owner, and their successors 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

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.
3. 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.
4. 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.
5. 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.
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 of Title 15.04 of the CMC at the time of building plan check submittal.
8. 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.
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 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.

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. Alcohol sales shall be limited to the hours established by the State of California Department of Alcoholic Beverage Control (ABC).

13. Alcoholic beverages may be sold for off-site consumption only.

14. The operation of the convenience store 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 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. 2023-759 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 2023-759 PASSED,
APPROVED AND ADOPTED this 19th day of October 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. 2023-759, was adopted by the Planning Commission at a regular meeting held October 19, 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.”