

PLANNING COMMISSION RESOLUTION NO. 2024-799

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS TO APPROVE FILE NO. CUP-2024-001, A REQUEST FOR A CONDITIONAL USE 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, IN ASSOCIATION WITH A NEW SUSHI RESTAURANT, SHIBUYA TO GO, LOCATED AT 5749 LAS VIRGENES RD C (APN: 2052-046-002), 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 November 7, 2024, 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 at or prior to the public hearing.

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

1. On July 26, 2024 an application was submitted on behalf of the property owner for File No. CUP-2024-001.
2. The project site is zoned Commercial, Retail (CR). The land use designation for the project site under the City's adopted General Plan is Business-Retail (B-R).
3. Properties surrounding the project site are zoned Residential, Single-Family (RS), Residential, Multifamily (RM), and Open Space-Development Restricted (OS-DR), and have General Plan land use designations of Residential-Single Family (R-SF), Residential-Multiple Family (16) (R-MF (16)), and Open Space-Resource Protected (OS-RP).
4. The project was reviewed by the Development Review Committee (DRC) on August 12, 2024.
5. Staff determined that the application was incomplete on August 20, 2024 and the applicant was duly notified of this incomplete status.
6. The applicant resubmitted for the Conditional Use Permit on September 20, 2024, and the application and plans were deemed complete by Staff on October 4, 2024.
7. Notice of the July 18, 2024 Planning Commission public hearing was posted at Juan de Anza Park, the Calabasas Tennis and Swim Center, and at Calabasas City Hall.
8. Notice of the November 7, 2024 Planning Commission public hearing was provided to property owners within 500 feet of the property as shown on the latest equalized assessment roll.
9. Notice of the November 7, 2024 Planning Commission public hearing was mailed or delivered at least ten (10) days prior to the hearing to the project applicant.
10. Notice of the November 7, 2024 Planning Commission public hearing included the notice requirements set forth in Government Code Section 65009 (b)(2).
11. A public hearing was held at the November 7, 2024 Planning Commission meeting, during which public testimony was taken.

12. Following the public hearing at the November 7, 2024 meeting, and based on the facts, reports, analyses, and testimony provided, the Commissioners requested that Staff prepare a resolution of approval for File No. CUP-2024-001, to be brought back to the Commission for adoption at the next regularly scheduled Planning Commission meeting.

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 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 proposed sale and on-site consumption of alcoholic beverages in association with the operation of a new sushi restaurant (approved under Permit No. ZCL-2024-138) is allowed in the Commercial, Retail (CR) zoning district with a Conditional Use Permit, per Section 17.11.010 of the Calabasas Municipal Code (CMC).

Additionally, per Section 17.12.035(B), alcoholic beverages may be sold for on-premises consumption at an establishment where the primary use is a restaurant provided that a conditional use permit is obtained and sales are conducted in compliance with the Alcoholic Beverage Control Act of the State of California. The applicant's proposed new restaurant 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 sale of beer and wine in conjunction with the operation of a new sushi 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 economic base..." (Policy II-11). Because the new restaurant and associated alcohol sales will occur within

an existing shopping center, the primary use of the subject site will not be altered as a result of this project. Therefore, 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); and*

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 new restaurant is within an existing shopping center, and the only exterior alteration is the installation of a new railing, as required by the Department of Alcoholic Beverage Control (ABC), to surround a 377 square foot outdoor dining area (approved under ZCL-2024-138). There are no other exterior alterations are proposed as part of the proposed project.

Therefore, because the proposed project is exempt from environmental impact review under the California Environmental Quality Act, 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 attached conditions, are compatible with the existing and anticipated future land uses in this area of the City. All activities associated with the operation of the new restaurant, 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 indoor dining area and the outdoor dining area, which will be enclosed with a railing in accordance with the Department of ABC requirements. There are no other exterior modifications proposed.

Furthermore, the subject site is located within a commercial shopping center, which currently contains various types of retail and office businesses, including an existing food service establishment. Therefore, the location and operating characteristics of the new sushi restaurant and associated alcohol sales are compatible with the existing and future land uses in the vicinity, and 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. CUP-2024-001 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. CUP-2024-001 or the activities conducted pursuant to this File No. CUP-2024-001. 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. CUP-2024-001, or the activities conducted pursuant to File No. CUP-2024-001. 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. 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 2022 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 15.04.900 of the Calabasas Municipal Code that references the 2022 California Fire Code as well as the 2022 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:

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.

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 Community Development Department.
11. Alcohol sales shall be limited to the hours established by the State of California Department of Alcoholic Beverage Control (ABC), and any additional limitations provided by this resolution of approval.
12. Alcoholic beverages may be sold for on- or off-site consumption.
13. 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.
14. All current and future tenants/owners are bound by the conditions of this Conditional Use Permit. 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 prior to issuance of any building permits.
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. 2024-799 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 2024-799 PASSED,
APPROVED AND ADOPTED this 21st day of November, 2024.

Wendy Fassberg
Chairperson

ATTEST:

Michael Klein, AICP
Community Development Director

APPROVED AS TO FORM:

John Fox
Aleshire and Wynder, LLP
Assistant City Attorney

Planning Commission Resolution No. 2024-799, was adopted by the Planning Commission at a regular meeting held November 21st, 2024 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.”