

P.C. RESOLUTION NO. 08-418

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALABASAS, APPROVING VARIANCE (NO. PL0800080) TO EXCEED THE MAXIMUM PERMITTED SITE COVERAGE IN ORDER TO ADD 726 SQUARE-FEET OF PERVIOUS PAVEMENT TO THE REAR PARKING LOT AND APPROVING A CONDITIONAL USE PERMIT (PL0800079) TO ALLOW THE ADDITION OF RETAIL WINE SALES TO THE EXISTING GENERAL RETAIL MERCHANDISE SALES USE AT AN EXISTING, LEGAL NON-CONFORMING PROPERTY LOCATED AT 23538 CALABASAS ROAD WITHIN THE COMMERCIAL-OLD TOWN (CT) 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 report prepared by the Community Development Department.
2. Staff presentation at the public hearing before the Planning Commission held on March 13, 2008
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 for a Variance on January 16, 2008.
2. On March 6, 2008 the application was deemed complete by staff.

3. Notice of the March 13, 2008 Planning Commission public hearing was posted at Juan de Anza Bautista Park, the Calabasas Tennis and Swim Center, Gelson's market and at Calabasas City Hall on February 28, 2008.
4. Notice of the Planning Commission public hearing was published in the *Acorn* prior to the hearing.
5. Notice of the March 13, 2008 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 Planning Commission public hearing was mailed or delivered at least ten (10) days prior to the hearing to the applicant.
7. Notice of Planning Commission public hearing included the notice requirements set forth in Government Code Section 65009 (b) (2).
8. The land use designation for the project site under the City's adopted General Plan is B-OT (Business-Old Town), which allows business uses.
9. The project site is currently zoned CT (Commercial-Old Town), which allows commercial uses.
10. The surrounding land uses around the subject property are mainly commercial uses.
11. The applicant requests approval for a Variance to exceed the maximum permitted site coverage in order to add 726 square-feet of pervious parking surface to the rear of the building and a Conditional Use Permit to add retail wine sales to the general retail merchandise sales permitted at the property.
12. The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 11 (b) (small parking lots) of the California CEQA Guidelines.

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

A. Variance (PL0800080) [CMC Section 17.62.070(E)]

- 1. That there are special circumstances applicable to the property (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 under identical zoning districts:**

The applicant is proposing to add 726 square-feet of pervious, paved surface in the rear of an existing legal non-conforming lot, located within the Commercial Old Town (CT) zoning district. The subject property is legal non-conforming because the existing site coverage stands at 82% which exceeds the maximum allowable site coverage of 72%. The existing building was built in 1919. At that time, cars were not as ubiquitous as they are today. The building was designed to be a long and narrow structure situated directly on the front of the property. Additionally, the long and narrow driveway leading to a minimal parking area was not designed to accommodate automobiles as its primary use. Therefore, there was little thought of providing anywhere near today's required capacity for automobile parking on the property. This is the case throughout Old Town and because of that, when the City adopted the Municipal Code requiring site coverage maximums that included off-street parking lots, the subject property was unable to meet the Code.

The minimal parking lot in the rear of the existing main building has been partially covered by an unpermitted storage facility. This demolition of the storage facility is included in the proposed parking lot reconfiguration. The lot currently has two parking spaces, one of which is a handicapped accessible space. The applicant is proposing to demolish the unpermitted structure and reconfigure the parking area to include three legal parking spaces as well as a legal handicapped space. In order to facilitate the new and improved parking situation, the applicant has proposed to resurface existing bare ground with 726 square-feet of pervious pavement. The addition of 726 square-feet of pavement will increase the non-conforming site coverage to 93.3%, an additional 11.2%.

The subject property has a unique shape as well as a unique site layout. The property is 37.18' wide and 160.58 feet deep. The main structure Bernard's Gallery is located at the front of the lot and is 27' wide and 76'-4" deep. The main building (housing a gallery and where the proposed wine sales will be located), the rental cottage and driving surfaces cover 5,093 square-feet or 81.6% of the lot which translated to a 9.4% overage to the maximum allowable site coverage for the Commercial-Old Town zoning district.(CMC 17.14.020).The applicant is requesting a variance to increase the site coverage to 93.2% or 11.2% over the

maximum. The proposed increase will result from adding 726 square-feet of pervious driving surface in the rear of the main building. If approved, the resultant increase in site coverage will facilitate the reconfiguration of the existing parking area to allow for a safer parking situation behind the gallery. The long narrow shape of the lot presents a unique and difficult development opportunity. The existing condition allows for a driveway of ten feet-eleven inches of width for the entry the driveway and little if any opportunity to increase or improve the parking area.

The property located immediately west and adjacent to the subject property, 23540 Calabasas Road (APN: 2068-004-065) has a lot size most comparable to the subject property. The lot size for this B-OT zoned parcel is 9,222 square-feet and the estimated site coverage is 100%. The lot immediately to the east of the subject property, 23528 Calabasas Road (APN: 2068-004-008) has a lot size of 30,675 square-feet with an estimated lot coverage of 98%. The other lots in the immediate area range from 93% to 99% site coverage. All of the lots in the area are designated with the same, B-OT, land use. Additionally the property located at 23528 Calabasas Road, immediately to the east of the subject property, also has a rental housing structure in the rear of the lot.

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 subject property has less percentage site coverage than the surrounding properties. The subject property has a unique shape that prohibits the proposed improvements in the rear of the primary building, specifically the addition of 726 square-feet of pervious pavement, without the granting of a variance to allow for this increase in site coverage. The subject property is zoned for and is conducting similar uses as the surrounding properties and is unable to enjoy the same privileges as the surrounding property owners, i.e. greater percent site coverage. Therefore, staff makes the finding that the variance should be granted based on CMC Section 17.62.070 (A).

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

The proposed 726 square-feet of additional paving will not be detrimental to the public health, safety or welfare. The larger parking surface will in fact improve the safety and accessibility of the existing parking area. The proposed project

will not affect the public health and safety of others in the vicinity and zoning district where the property is located.

4. That granting the variance is consistent with the General Plan and any applicable specific plan:

The project is not proposing a change in use or a substantial increase in square-footage. The project as proposed with a variance application is consistent with the General Plan.

B. Conditional Use Permit (PL0800079) [CMC 17.62.050(E)]

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 addition of retail wine sales to the retail general merchandise use is a permitted activity within the Old Town Commercial zoning district in conjunction with a primary allowable use, in this case an art gallery, as defined by Section 17.14.020 - Commercial Districts of Title 17, Land Use and Development Code.

2. The proposed use is consistent with the General Plan and any applicable specific plan or master plan;

The proposed addition of retail wine sales is consistent with the City of Calabasas General Plan because the proposed use contributes to the Community Development Fiscal Management policy (A.2) of maintaining and strengthening the retail attractiveness of the commercial corridors in the City, including Calabasas Road.

3. The approval of the conditional use permit for the proposed use is in compliance with the California Environmental Quality Act (CEQA); and

The issuance of a Conditional Use Permit for retail wine sales is exempt from CEQA review because it does not meet the definition of a project (Section 15378(a)). The granting of this permit for retail wine sales has no “potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...”

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 will take place entirely within the leased tenant space.

The subject site is located within the retail corridor along Calabasas Road, which has a number of restaurants. The location and operating characteristics of the Old Town shopping center are compatible with the existing and future land uses of commercial retail uses in the vicinity.

Section 4. In view of all of the evidence and based on the foregoing findings and conclusions, the Planning Commission hereby approves Variance No. (PL0800080) and Conditional Use Permit No. PL0800079 based on those findings cited above and incorporating the conditions contained below:

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 this Variance (PL 0800080) and Conditional Use Permit (PL0800079) or the activities conducted pursuant to the Variance (PL0800080) and Conditional Use Permit (PL0800079). Accordingly, to the fullest extent permitted by law, Bernard and Cynthia Rosenson and successors and assigns, 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, the issuance of this Variance No. (PL0800080) and Conditional Use Permit (PL0800079) or the activities conducted pursuant to this Variance No. 0800080 and Conditional Use Permit (PL0800079). Bernard and Cynthia Rosenson and 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

Community Development Department/Planning Division

1. The proposed 726 square-feet of pervious pavement shall be constructed 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.

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. This grant shall not be effective for any purposes until the applicant and the owner of the property involved (if other than the applicant) have filed, with the office of the Community Development Department an affidavit recorded with the County of Los Angeles stating the applicant and the owner are aware of and agree to accept all conditions of approval.
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 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.

7. All exterior lights are subject to the provisions set forth in the Lighting Ordinance Chapter 17.27 of the Land Use and Development Code. Lighting of 60 watts or less on residential projects is exempt by the Lighting Ordinance.
8. All exterior colors and materials used for the construction of the project shall be in substantial conformance with the approved materials and colors on the plans.
9. Prior to commencement of construction, all necessary building permits must be obtained from the Building and Safety Division.
10. The project must comply with the building codes in effect at this time, which are the "2007" Los Angeles County Building, Plumbing, and Mechanical codes, and the "2007" California Electrical Code.
11. The project is located within a designated "Very High Fire Hazard Severity Zone". The requirements of Chapter 64 of the 2002 Los Angeles County Building Code, Vol. 1, must be incorporated into all plans.
12. 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.
13. The applicant and contractors shall implement all reasonable efforts to reuse and recycle construction and demolition debris, to use environmentally friendly materials, and to provide energy efficient buildings, equipment, and systems. The applicant shall provide proof of recycling quantities to get final clearance of occupancy.
14. 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." Please contact the Public Works Department for a list of permitted haulers. An Encroachment Permit is required prior to placing a refuse bin/container on the street.

15. Construction Activities - Hours of construction activity shall be limited to:

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

Section 5. All documents described in Section 1 of PC Resolution No. 08-418 are deemed incorporated by reference as set forth at length.

PLANNING COMMISSION RESOLUTION NO. 08-418 PASSED, APPROVED AND ADOPTED this 13th day of March, 2008.

Mark Sikand, Chairperson

ATTEST:

Maureen Tamuri
Community Development Director

APPROVED AS TO FORM:

City Attorney

Planning Commission Resolution No. 08-418, was adopted by the Planning Commission at a regular meeting held March 13, 2008, 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.”