



CITY OF NOVATO
COMMUNITY DEVELOPMENT

DATE: January 27, 2022
TO: City Council
City Manager
Planning Manager
FROM: Steve Marshall, Zoning Administrator
SUBJECT: Zoning Administrator's Hearing of January 27, 2022

NEW ITEM:

**GOPUFF DELIVERY SERVICE (KZ)
P2021-111; USE PERMIT AMENDMENT
CEQA CATEGORICALLY EXEMPT – SECTION 15301
APN 153-340-28; 104 VINTAGE WAY**

Conduct a public hearing and possibly approve a use permit application for operation of a food and alcoholic beverage delivery service operated by 'Gopuff' within an existing Beverages and More (BevMo!) retail store within the Vintage Oaks Shopping Center.

PRESENT

Steve Marshall, Zoning Administrator
Kaitlin Zitelli, Planner II
Tim Alborg, representing Gopuff
Kathryn Kafka, representing Gopuff

PUBLIC HEARING

Zoning Administrator Marshall opened the public hearing.

Zoning Administrator Marshall confirmed the applicant had an opportunity to consider the staff report and reviewed the recommended conditions of approval.

Tim Alborg, representing Gopuff, confirmed receiving the staff report and conveyed to Zoning Administrator Marshall that there were no objections regarding the recommended conditions of approval.

Zoning Administrator Marshall opened the public comment period.

No members of the public attended the hearing, and the public comment period was closed.

Zoning Administrator Marshall confirmed no written comments were received regarding the proposal.

Zoning Administrator Marshall stated he was approving the use permit amendments based on the CEQA finding and use permit findings in the staff report and applying the recommended conditions of approval.

Zoning Administrator Marshall noted there is an appeal period of ten (10) calendar days.

The public hearing was adjourned.

FINDINGS

1. CEQA Finding

In accordance with the California Environmental Quality Act, the Zoning Administrator hereby determines the Project to be exempt from further environmental review pursuant to CEQA Guidelines Section 15301, based on the finding detailed in the staff report.

2. Use Permit Findings

In accordance with Section 19.42.050.E of the Novato Municipal Code, the Novato Zoning Administrator made the following findings as supported by the facts discussed in the staff report.

- a. The proposed use is consistent with the General Plan and any applicable specific plan;
- b. The proposed use is allowed with a use permit within the applicable zoning district and complies with all applicable provisions of this Zoning Ordinance and any relevant Master Plan and/or Precise Development Plan;
- c. The establishment, maintenance or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
- d. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and
- e. The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

ACTION TAKEN

The Zoning Administrator approves the use permit amendment as described in the staff report and per the conditions of approval below.

CONDITIONS OF APPROVAL

The following conditions of approval shall be met to the satisfaction of the Novato Planning Division:

General Conditions

1. The Use Permit approval shall expire two (2) years from the date of approval unless the activity authorized herein has commenced operation.

2. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Base Fee System. Failure to pay said fees may result in the City withholding issuance of related building permits, certificate of occupancy, and recordation of final maps or other entitlements.
3. Hours of in-store operation shall be no later than 10 p.m. and no earlier than 9 a.m. with the beer and wine tasting areas to be open on Fridays from 4 to 7 p.m., and on Saturdays, Sundays, and holidays from noon to 6 p.m.
4. The hours of operation for sale of alcohol products via app/online platform for delivery shall be limited to 6 a.m. to 2 a.m. seven days per week.
5. The hours of operation for sale of non-alcohol products via app/online platform for delivery-only shall be allowed 24 hours a day/7 days per week.
6. The applicant or their successor in interest shall continue to adhere to all other conditions of approval to found in Planning Commission Resolution 04-013, signed May 24, 2004, provided as Attachment 3 to this staff report.

The following conditions must be met to the satisfaction of the Building Division of the City of Novato Community Development Department:

7. A building permit issued by the City of Novato Building Division is required for the interior modification to the tenant space.

The following conditions must be met to the satisfaction of the North Marin Water District:

8. The project must conform to District Regulation 15 – Mandatory Water Conservation Measures. Occupancy approval shall not be granted until compliance with water conservation measures, as applicable, can be verified.

The following conditions must be met to the satisfaction of the Novato Fire Protection District:

9. Changes or alterations to the building that effect Fire Sprinkler coverage shall be evaluated by a qualified licensed contractor. If alterations are required to the fire sprinkler system, a separate submittal of plans, permits, and fees shall be submitted directly to NFD.
10. Changes or alterations to the building that effect fire alarm coverage shall be evaluated by a qualified licensed contractor. If alterations are required to the fire alarm system, a separate submittal of plans, permits, and fees shall be submitted directly to NFD.
11. 'No Parking Fire Lane' curb and signs shall be installed in accordance with NFD Standards #204 as required by the Fire Marshal.
12. 'Knox' key access shall be installed at the premises conforming to Novato Fire Protection Standard #202.
13. The facility and improvements shall comply with California Building Code and State Fire Marshal building standards and regulations.

14. Indemnity and Time Limitations

- a. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack set aside, void or annul the City's decision to approve the application and associated environmental determination at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the applicant, the City, and/or parties initiating or bringing such action.
- b. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, employees, and attorneys for all costs incurred in additional investigation (such as the environmental determination at issue herein or any subsequently required Environmental Document), if made necessary by said legal action and if the applicant desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- c. The applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- d. Unless a shorter period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.
- e. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The applicant is hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

FURTHER ACTION

The decision of the Zoning Administrator is final unless a written appeal along with the appeal fee are submitted to the Community Development Department within 10-days of the date of the action.