



CITY OF NOVATO
COMMUNITY DEVELOPMENT

DATE: October 27, 2022

TO: City Council
City Manager
Community Development Director

FROM: Steve Marshall, Zoning Administrator

SUBJECT: Zoning Administrator's Hearing of October 27, 2022

NEW ITEM:

PERUVIAN GROCERY STORE
CEQA CATEGORICALLY EXEMPT: SECTION 15301
P2022-083; USE PERMIT
APN 160-201-31; 455 ENFRENTE ROAD (477 ENTRADA DR.)

The applicant, Juan Carlos Gomez Otoya, is requesting a use permit to allow for a new grocery store business that will include alcoholic beverage sales for off-site consumption, within an existing tenant suite at 455 Enfrente Road (477 Entrada Drive; APN 160-201-31).

PRESENT

Steve Marshall, Zoning Administrator
Juan Carlos Gomez Otoya (representing Peru Groceries)
Rita Escajadillo (representing Peru Groceries)

PUBLIC HEARING

Zoning Administrator Marshall opened the hearing.

Zoning Administrator Marshall reviewed the staff report and conditions of approval with the representatives of Peru Groceries.

There were no concerns about the proposed conditions of approval.

No members of the public attended the hearing.

Zoning Administrator Marshall confirmed there were no public comments against the proposal and that the project planner had received messages supporting the grocery store.

Zoning Administrator Marshall approved the use permit.

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

The meeting was closed.

FINDINGS

1. CEQA Finding

The proposal is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and the City of Novato Environmental Review Guidelines pursuant to CEQA Guidelines Section 15301, Existing Structures. CEQA Guidelines Section 15301 exempts projects that involve interior modifications or alterations, such as interior partitions and plumbing. The proposed grocery store and associated alcohol sales are an allowed use at 455 Enfrente Road with approval of a use permit. This proposal involves a change in use of the existing tenant suite with minor tenant improvements and no building expansion(s).

2. Use Permit & Alcohol Sales 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.

1. The proposed use is consistent with the General Plan and any applicable specific plan;
2. 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;
3. 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;
4. 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
5. The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

In accordance with Section 19.34.050.D. of the Novato Municipal Code, the Novato Zoning Administrator made the following findings as supported by the facts discussed in the staff report.

1. The proposed use will not adversely affect the welfare of the area residents or result in an undue concentration of establishments dispensing alcoholic beverages in the area, as determined by the Review Authority.
2. The proposed use is located at an appropriate distance from:
 - a. Residential uses;
 - b. Religious facilities, schools, public parks and playgrounds, and other similar uses;
 - c. Other establishments dispensing alcoholic beverages.
3. The size and proposed activity level (i.e., music, entertainment activities, food service, arcade games, or other amusement activities, etc.) will be compatible with the uses in and/or character of, the surrounding area.
4. The signs and other advertising on the exterior of the premises will be compatible with the character of the area.
5. The applicant has committed to voluntarily provide a beverage service training program, should one be made available locally on a no-charge basis for employees who sell or dispense alcoholic beverages, and would provide them with the knowledge and skills needed to comply with their responsibilities under State law, including the following topics:
 - a. State laws relating to alcoholic beverages, particularly ABC regulations and penal provisions concerning sales to minors and intoxicated persons, driving under the influence, hours of legal operation, and penalties for violations of these laws;
 - b. The potential legal liabilities of owners and employees of businesses dispensing alcoholic beverages to patrons who may subsequently injure, kill, or harm themselves or innocent victims as a result of the excessive consumption of alcoholic beverages;
 - c. Alcohol as a drug and its effects on the body and behavior, including the operation of motor vehicles;
 - d. Methods of dealing with intoxicated customers and recognizing underage customers;
 - e. Methods to appropriately pace customer drinking to reduce the risk that the customer will leave the premises in an intoxicated manner; and
 - f. Knowledge of mixology, including marketable alternatives to alcoholic beverages.

ACTION TAKEN

The Zoning Administrator approved the use permit subject to the conditions of approval below.

CONDITIONS OF APPROVAL

The following conditions of approval shall be met to the satisfaction of the *Zoning Administrator*:

1. This 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. A Sign Permit shall be obtained through the Planning Division prior to the installation of any exterior building signage, subject to the review and approval of the Community Development Director.
4. Noise associated with this approval shall conform to NMC [Section 19.22.070](#) (Noise and Construction Hours).
5. The applicant shall secure an alcohol license from the California Department of Alcoholic Beverage Control (ABC). The applicant shall deliver a copy of the use permit approved by the Zoning Administrator to ABC when securing the alcohol license.
6. The applicant is encouraged to have its employees attend periodic alcohol service trainings offered by the Novato Police Department.
7. Alcoholic beverages shall not be sold to patrons who are obviously intoxicated or under the influence.
8. No employee or volunteer shall consume alcohol on premises during their work shift.
9. No exterior or interior window signage with visibility from the right-of-way, sidewalks, or parking areas shall be used to advertise in any manner the sale of alcohol products.
10. At any time, the business may be visited, unannounced by City staff, to review the business operation's compliance with the City's regulations (including use permit conditions) concerning alcoholic beverage establishments. Violation of any conditions of this Use Permit or any municipal, state, or federal law, rule or regulation, including without limitation the provisions of the Novato Municipal Code or Alcohol Beverage Control Act regulations, may be grounds for revocation or modification of the Use Permit.
11. Corporate, franchise or organization regulations shall not override the conditions of the Use Permit as issued by the City of Novato.

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

12. Any tenant improvements are subject to a building permit. Tenant improvements will be reviewed to ensure that the proposed occupancy is consistent for the building construction type, and the adjacent occupancies.

The following conditions of approval shall be met to the satisfaction of the *North Marin Water District (NMWD)*: Please contact the NMWD at (415) 897-4133 if you have questions about these requirements:

13. The project must conform to NMWD Regulation 15 (Mandatory Water Conservation Measures). Occupancy approval shall not be granted until compliance with water conservation measures, as applicable can be verified. For the full scope of the required water conservation measures for both indoor fixtures/appliances and landscaping refer to NMWD Regulation 15 or 17, Section (e.) and (f.) at www.nmwd.com Please contact the NMWD Water Conservation Coordinator at (415) 761-8933 if you have any questions regarding clarification of the required water conservation measures or plans submittal requirements.

The following conditions of approval shall be met to the satisfaction of the *Novato Fire Protection District (NFPD)*:

14. An automatic fire sprinkler system is required to be installed conforming to NFPA Standard 13. Plans and hydraulic calculations shall be submitted to the Fire Marshal for review prior to installation. Contact the North Marin Water District to apply for fire service connection. Additional Sizing may be required due to available pressures and fire flow.
15. All automatic fire sprinkler and fire alarm systems, flow switches, and control valves shall be monitored by an approved UL Central Station company, zoned and enunciated as required by the Novato Fire District and Fire Protection Standard 400.
16. Knox key access shall be installed at the premises conforming to Novato Fire Protection Standard 202.

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.