

Capitola Planning Commission

Agenda Report



Meeting: July 20, 2023

From: Community Development Department

Subject: 111 Capitola Avenue

Permit Number: 23-0325

Location: 2 parking spaces in front of English Ales

Coastal Development Permit, Design Permit, and Major Encroachment Permit for Custom Street Dining Deck for English Ales at 111 Capitola Avenue in the Mixed-Use Village zoning district.

Environmental Determination: Categorically Exempt

Property Owner: John Kettman

Representative: Peter Blackwell, Business Owner

Applicant Proposal:

English Ales is pursuing approval of Design Permit, Coastal Development Permit (CDP), and Major Encroachment Permit for a custom street dining deck. The street dining deck is proposed in two public parking spaces in front of English Ales at 111 Capitola Avenue in the Mixed-Use Village zoning district.

Background:

On December 9, 2021, the City Council approved an Outdoor Dining Ordinance which establishes a permitting process for street and sidewalk dining within the village. The ordinance was certified by the Coastal Commission on July 14, 2022.

On July 21, 2022, the Planning Commission approved a Blanket CDP for Prototype Street Dining Decks which create a standard design available to all businesses subject to a building permit only.

On December 1, 2022, the Planning Commission reviewed a custom dining deck application for 111 Capitola Avenue and denied the application by a vote of 2-1.

In January 2023, Capitola's Village and Wharf were significantly impacted by winter storms. Local business facilities were damaged, and tourism slowed. A secondary impact was a slow roll out of the city's Outdoor Dining Program.

On June 1, 2023, the Planning Commission modified the [Capitola Prototype Street Dining Deck Design](#) in an effort to reduce cost and simplify constructability of the dining decks.

On July 7, 2023, the City received a new custom dining deck application for 111 Capitola Avenue.

Analysis:

English Ales is proposing a custom street dining deck which incorporates some elements from the prototype design. The composite deck platform, stainless steel heaters, rope and stanchions, and ceramic planters flanking the entrance are elements of the prototype design. The custom design elements include a fully enclosed wall of wooden planters around the periphery to match

the business storefront, black aluminum chairs and tables, red umbrellas with LED light and solar, and concrete umbrella bases.

Pursuant to Capitola Municipal Code (CMC) §17.96.170, the following Operating and Development Standards apply to street dining decks:

1. One Facility Only. An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.

Staff Analysis: The applicant is proposing a street dining deck only.

2. Location within Eating Establishment Frontage. Street dining decks are allowed on parking spaces that are wholly or partially located in the right-of way directly adjacent to the eating establishment. The City may allow an outdoor dining area to extend beyond the frontage if (1) Due to the road and parking space layout, the outdoor dining area cannot be designed without extending the area beyond immediately adjacent parking spaces; (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and (3) Extending the outdoor dining area will not adversely impact coastal access.

Staff Analysis: The street dining deck is located primarily in front of 111 Capitola Avenue with a limited portion of the deck in front of 109 and 115 Capitola Avenue where the parking spaces overlap property lines. The proposed extension will not have a significant impact on adjoining businesses or coastal access.

3. Signs. Limited to one business identification sign and one menu sign each not to exceed two square feet.

Staff Analysis: The application does not include any signs. Condition of approval #10 is included limiting the business to one business identification sign and one menu sign each not to exceed two square feet.

4. Stormwater Drainage. All street dining decks must allow for adequate stormwater drainage.
 - a. Dining decks shall not block the drainage flow along the gutter line.
 - b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.

Staff Analysis: There are no storm drain inlets along the curb at this location. The plans show use of a wire screen at the ends of the deck along the curb to allow water to pass. The plan also shows tread plates above the gutter that can be removed to maintain and clear debris that gets under the deck. The Public Works Director reviewed the proposed application and found it to comply with the standard. Condition of approval #11 requires final review for compliance at time of building permit to the satisfaction of the Public Works Director.

5. Utilities. All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.

Staff Analysis: The Public Works Director reviewed the proposed application and found it to comply with the standard. Condition of Approval #4 requires final review for compliance at time of building permit. There are two utility boxes in the sidewalk (AT&T and water meter) that are not impacted by the proposed street dining deck.

6. Trash and Maintenance. An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:
 - a. All trash shall be picked up and properly disposed of.
 - b. All flower boxes and planters shall contain live, healthy vegetation.
 - c. All tables, chairs, equipment, and structures must be kept clean and operational.

Staff Analysis: Condition of approval #13 requires this standard be met.

7. Sound. Music and amplified sound are not allowed in an outdoor dining area.

Staff Analysis: Condition of approval #14 requires this standard be met.

8. Bicycle Parking for Street Dining Decks. Bicycle parking is required for street dining decks.
 - a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
 - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
 - c. As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an in-lieu fee which fee shall be deposited into the City's in-lieu bike fund to create a central bicycle parking location.

Staff Analysis: Four bicycle parking spaces are required. The applicant is proposing to pay the in-lieu fee rather than create onsite bike parking. (Condition #20)

9. Hours of Operation. Outdoor dining decks may only operate during specific hours.
 - a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
 - b. The City may allow extended hours for street dining decks for special events and holidays.

Staff Analysis: Condition of approval #15 requires this standard be met.

10. Open for Use. All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.

Staff Analysis: Condition of approval #16 requires this standard be met.

11. Materials. Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are discouraged.

Staff Analysis: The applicant is proposing to reutilize and repaint the existing wood planters to match the building. The planters have been in use since Spring of 2021 as part of the Covid-19 temporary permits. The applicant is proposing a mix of prototype items and requesting design approval of custom items as follows:

Prototype Items

- New stainless steel heaters
- Rope and stanchion
- Ceramic planters

Custom Items

- Black aluminum chairs
- Black aluminum tables
- Red umbrella with LED lights
- Concrete umbrella bases

The proposed custom tables and chairs are commercial grade black aluminum. The applicant deployed these items and they are of a quality and durability comparable with the prototype tables and chairs.

The proposed umbrella is a retail grade product with LED lights under the umbrella canopy and a small solar collector at the top. The LED lights are cool in color and in direct contrast to the warm lights on the village street posts. Additionally, the umbrellas are nine feet wide which is wider than the eight-foot six-inch deck width and will encroach into the drive lane or sidewalk area creating a safety issue. Lastly, the proposed umbrella bases appear worn and present a higher profile that may be a tripping hazard. Condition of approval #24 requires the applicant to modify the plan to include a prototype umbrella with a maximum spread of eight foot six inches, a prototype umbrella bases, and the prototype string lighting.

To ensure ongoing quality and maintenance, condition of approval #17 requires the street dining deck to have high-quality, durable materials that can withstand inclement weather. All approved items and structures shall be maintained including but not limited to tables, chairs, umbrellas, lights, heating equipment, planters, etc. If signs of weathering (fading, rust, holes, etc.) are visible, the item(s) shall be replaced in-kind immediately. Faded umbrellas shall be replaced with a UV rated fabric and may not include logos, labels, or advertising. Overtime, if the applicant would like to modify the tables, chairs, umbrellas, lights, or heating equipment, they must first receive written approval from the Community Development Director.

12. Good Standing. An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, "good standing" shall mean that within the twenty-four months directly preceding submission of a complete application for an Administrative Permit or Design Permit, the applicant has not been issued a notice of abatement, violation, or been subject to any code enforcement proceedings related to an ABC license, entertainment permit, or use permit by the City or any other regulatory or permitting agency. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice retains the applicants good standing.

Staff Analysis: The applicant is in good standing.

13. CDP Recertification. All CDPs issued for outdoor dining permits require recertification by the City Council within three years of CDP issuance, and every five years thereafter. Recertification shall require a public hearing before the City Council. City staff will initiate the recertification process by providing notice to the applicant of the hearing date, at least thirty (30) days in advance of the public hearing.

Staff Analysis: Condition of approval #9 includes the requirement for recertification. The RTC currently anticipates the two segments of the rail trail which go through Capitola to be constructed in 2026/2027. With increased cyclists and pedestrians anticipated through the village, the City may require the street dining deck at 111 Capitola Avenue to be removed, as it could be an impediment to coastal access.

Major Revocable Encroachment Permit

The planning commission may issue permits for private improvements in the right of way that go beyond the standards of minor permits. The Commission's decision as to whether to issue such permit shall be made by evaluating the following considerations:

1. The expense and difficulty that will be entailed in removing the improvement in the event of street widening;
2. Whether the proposed improvements are in conformity with the size, scale, and aesthetics of the surrounding neighborhood;
3. Preservation of views; and
4. Whether granting the permit would tend to result in the granting of a special privilege, in the sense that granting this permit would tend to preclude granting similar permits to neighboring property.

If the benefit to the applicant and community is determined to exceed the detriment to the community, the permit shall be approved.

Staff Analysis: The City has determined that street dining decks, in a limited implementation, are a net benefit to the Capitola Village. The loss of parking is mitigated by increased bike parking and enhanced visitor and resident opportunities to enjoy the unique and charming Village and beach area. The City has the ability to revoke the major revocable encroachment permit should the two spaces be needed for a public use.

The proposed access ramp to the dining deck encroaches two feet six inches into the sidewalk. Section 17.96.170(G)(3) limits dining deck locations to the parking spaces immediately in front of the store frontage. The Planning Commission may allow extensions beyond the designated area if the extension will not have an impact on adjacent businesses or coastal access. In this case, the extension is needed due to the relatively steep slope toward the crown of the roadway and the need to accommodate of an accessible ramp entrance. The sidewalk along the frontage of the property is over 10 feet wide, which allows ample clearance width to accommodate the access ramp and minimum sidewalk passage with a remainder of over three feet of additional clearance. The Public Works Department has reviewed the proposal and does not have any concerns with coastal access or sidewalk clearances.

Recommendation:

Review the Custom Street Dining Deck Design and approve the Design Permit, CDP, and Major Revocable Encroachment Permit consistent with the conditions of approval and findings.

Conditions of Approval:

1. The project approval consists of a Coastal Development Permit, Design Permit, and Major Revocable Encroachment Permit for a custom street dining deck. The proposed custom design is approved as indicated on the final plans reviewed and approved by the Planning Commission, except as modified through conditions imposed by the Planning Commission during the hearing.

2. The Design Permit, Coastal Development Permit, and Major Revocable Encroachment Permit is transferable between owners so an approved street dining deck design may be conveyed or assigned by the applicant during a sale to the new property owner without losing the approval. The permit cannot be transferred off the parking space on which the approval was granted.
3. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. Final building plans shall be consistent with the custom design plans approved by the Planning Commission. All construction and site improvements shall be completed according to the approved plans.
4. Prior to issuance of a building permit, the applicant shall complete a revocable encroachment agreement and provide a Certificate of Insurance, in a form provided by the Public Works Department, for all approved privately installed improvements within the unutilized street right-of-way.
5. During construction, any activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B.
6. Prior to a certificate of occupancy, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
7. Prior to issuance of a certificate of occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
8. The street dining deck must comply with all applicable requirements of Capitola Municipal Code Section 17.96, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
9. CDP Recertification Requirement. All CDPs issued for outdoor dining permits shall require recertification by the City Council no later than three years after the CDP is issued, and every five years thereafter. Recertification shall require a public hearing before the City Council. City staff will initiate the recertification process by providing notice to the applicant of the hearing date, at least thirty (30) days in advance of the public hearing. For a CDP to be recertified, the City Council must find that the subject project is operating in compliance with the findings and conditions of the CDP and in compliance with the LCP. The City Council may recertify, modify, or revoke the CDP. The City Council's decision shall be a final action. The project applicant, any aggrieved person, or any two members of the Coastal Commission may appeal the City

Council decision. Appeal procedures for coastal development permits shall be as specified in Section 17.44.150.

10. Signs. A maximum limit of one business identification sign and one menu sign each not to exceed two square feet are allowed per street dining deck.
11. Stormwater Drainage. At time of building permit, the custom street dining deck must be amended to include drainage above the gutter and a hatch above the storm drain to allow for adequate stormwater drainage and access to the inlet. Dining decks shall not block the drainage flow along the gutter line. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.
12. Utilities. All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
13. Trash and Maintenance. An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:
 - a. All trash shall be picked up and properly disposed of.
 - b. All flower boxes and planters shall contain live, healthy vegetation.
 - c. All tables, chairs, equipment, and structures must be kept clean and operational.
14. Sound. Music and amplified sound are not allowed in an outdoor dining area.
15. Hours of Operation. Outdoor dining may occur between 7 a.m. and 10 p.m. seven days a week. The city may allow extended hours for street dining decks for special events and holidays.
16. Open for Use. All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must have tables ready for customers to use the outdoor dining area when the establishment is open for business.
17. Materials and Furniture. The street dining deck shall have high-quality, durable materials that can withstand inclement weather. All approved infrastructure shall be maintained including but not limited to tables, chairs, umbrellas, lights, heating equipment, etc. If signs of weathering (fading, rust, holes, etc.) are visible, the item(s) shall be replaced in-kind immediately. Faded umbrellas shall be replaced with a UV rated fabric and may not include logos, labels, or advertising. Overtime, if the applicant would like to modify the tables, chairs, umbrellas, lights, or heating equipment, they must first receive written approval from the Community Development Director or Planning Commission.
18. Stanchions. The portable stanchions and ropes shall not encroach into the sidewalk. They must be located on the street dining deck. Capitola Prototype Street Dining Deck. The portable stanchions and ropes shall not encroach into the sidewalk. They must be located on the street dining deck.
19. All street dining facilities may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.

20. The applicant shall provide the required (four) bike parking spaces via the in-lieu fee option. The in-lieu bike fee requires a one time \$200 per bike parking space fee and an ongoing annual \$300 per bike space annual fee. The annual fee is subject to increase as authorized by the City Council. The applicant shall make the initial payment prior to issuance of Building Permits for the dining deck.
21. Planters. The custom planters shall be repainted to match the building, prior to certificate of occupancy for the dining deck.
22. Heaters. Each street dining deck may have free standing heaters. The free standing heaters shall be uniform and match within each dining deck. The details of the street heaters shall be submitted with the building permit application.
23. The applicant shall modify the plans for Building Permit plan check to replace the proposed umbrellas and umbrella bases with prototype umbrellas with a maximum spread of eight foot six inches wide, prototype umbrella bases, and prototype string lights.
24. The plans submitted for Building Permit plan check shall show that the gutter is to remain clear for drainage and remove the portion of the fascia board that crosses the gutter.

Design Permit Findings

- A. The sidewalk dining area or street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.**

The proposed dining deck complies with all applicable standards of the Zoning Code and CDP. Conditions of approval have been added to ensure ongoing compliance.
- B. If located in the coastal zone, the sidewalk dining area or street dining deck is consistent with the Local Coastal Program, will not adversely impact coastal resources, coastal access, and coastal views, and has been authorized through a valid coastal development permit.**

The CDP applies to this proposal and the limited use of Village street parking for dining decks. The applicant is providing four bike parking spaces to offset the use of street parking.
- C. The design of the sidewalk dining area or street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).**

The proposed dining deck provides an inviting and active place for guests and visitors to enjoy Capitola Village.
- D. The sidewalk dining area or street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.**

The applicant has proposed all weather materials and items. The dining deck will maintain a quality aesthetic with regular maintenance, as conditioned to remove the proposed umbrellas and umbrella stands.

E. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

Section 15305 (class 5) and 15311 (class 11) of the CEQA Guidelines exempts minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density and projects that consist of construction or placement of minor structures that are accessory to existing commercial facilities and is subject to Section 753.5 of Title 14 of the California Code of Regulations. This project involves street dining decks within the Mixed-Use Village zoning district. No adverse environmental impacts were discovered during review of the proposed project.

Coastal Development Permit Findings

A. The project is consistent with the LCP land use plan, and the LCP implementation program.

The proposed development conforms to the City's certified Local Coastal Plan (LCP) land use plan and the LCP implementation program.

B. The project maintains or enhances public views.

The proposed project is located within public parking spaces (maximum 25) in the mixed-use village. The project will not negatively impact public landmarks and/or public views.

C. The project maintains or enhances vegetation, natural habitats and natural resources.

The proposed project is located within public parking spaces in the mixed-use village zoning district. The street dining deck maintains coastal access. The street dining deck will maintain or enhance vegetation consistent with the allowed use and will not have an effect on natural habitats or natural resources.

D. The project maintains or enhances low-cost public recreational access, including to the beach and ocean.

The project involves a street dining deck will not negatively impact low-cost public recreational access. For each parking space utilized for the street dining deck, four bicycle parking spaces are required, and the applicant has agreed to the in-lieu fee option.

E. The project maintains or enhances opportunities for visitors.

The project involves a street dining deck and will not negatively impact visitor serving opportunities. The street dining deck will enhance the visitor experience providing additional opportunities for dining.

F. The project maintains or enhances coastal resources.

The project involves a custom street dining deck and will not negatively impact coastal resources. On busy beach days, the additional seating will provide more opportunities for visitors to dine on a deck and take in the view and coastal feel of the village.

G. The project, including its design, location, size, and operating characteristics, is consistent with all applicable design plans and/or area plans incorporated into the LCP.

The proposed street dining deck project complies with all applicable design criteria, design guidelines, area plans, and development standards. The project has been conditioned to ensure the operating characteristics are consistent with the outdoor dining regulations of the zoning code.

H. The project is consistent with the LCP goal of encouraging appropriate coastal development and land uses, including coastal priority development and land uses (i.e., visitor serving development and public access and recreation).

The project involves a street dining deck design for future development of up to 25 parking spaces within the mixed-use village zoning district. The project is consistent with the LCP goals for appropriate coastal development and land uses. The use is an allowed use consistent with the mixed-use village zoning district.

Major Revocable Encroachment Permit Findings

A. The project's benefit to the applicant and community exceed the detriment to the community.

The City has determined that street dining decks, in a limited implementation, are a net benefit to the Capitola Village. The loss of parking is mitigated by increased bike parking and enhanced visitor and resident opportunities to enjoy the unique and charming Village and beach area.

Attachments:

1. Custom Street Dining Deck plan set

Report prepared by: Brian Froelich
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