

# Capitola Planning Commission

## Agenda Report



**Meeting:** July 20, 2023

**From:** Community Development Department

**Topic:** 1855 41<sup>st</sup> Avenue

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**Permit Number: #23-0041**

**APN: 034-261-38, -52**

Conditional Use Permit to allow Capitola Mall food court restaurants to sell beer and wine within the designated food court area. The project is located within the C-R (Regional Commercial) zoning district.

The project is not located within the Coastal Zone.

Environmental Determination: Categorical Exemption

Property Owner: Merlone Geier

Representative: Brian Kirk, Filed: 02.03.23

### **Applicant Proposal:**

The applicant is proposing a Conditional Use Permit (CUP) to allow the sale and consumption of beer and wine within the Capitola Mall Food Court by food court restaurants. The permit would allow restaurants to utilize the interior quasi-public seating area as a shared premises for consumption of alcohol.

### **Background:**

In early 2021, Capitola Planning and Police met with the applicant onsite to discuss the possibility of alcohol sales and consumption in the shared premises of the food court and understand the site layout. An official application was submitted to the City on February 3, 2023.

### **Discussion:**

The Capitola Mall food court is located at 1855 41<sup>st</sup> Avenue on western side of the mall with frontage on Clares Street. The food court is a small part of the larger multi-tenant structure with a current capacity for ten food establishments. Of the ten tenant spaces, eight are included for potential alcohol sales.

The applicant is proposing to include the sale and consumption of beer and wine (onsite) in the food court and for to-go sales. In the Regional Commercial zoning district, the sale of alcoholic beverages for on- or off-site consumption from a restaurant requires a conditional use permit (CUP). The site is also located in a high crime area and/or a census tract with an over-concentration of retail alcohol establishments, therefore the Chief of Police must provide a letter of Public Necessity and Convenience (PCN) in order for establishments to obtain new or different ABC licenses.

The shared premises is approximately 7,000 square feet and includes eight eligible tenant spaces (Attachment 3). Currently, five of the tenant spaces are occupied. Early input in 2021 from Police and ABC Licensing staff indicated that support would only be given to a shared alcohol premises

within the boundaries of the existing food court area as it would be too difficult to regulate the whole interior of the mall. The application identifies the proposed alcohol consumption area (Attachment 1), which is slightly smaller than the whole food court and excludes the two inner-most court tenant spaces on the north side, currently occupied by Wetzel's Pretzels and one of the two tenant spaces occupied by Sugary Bakery. Businesses wishing to utilize the 'shared premises' seating areas would apply for an ABC license, presumably a Type 41 license for *On Sale Beer and Wine Eating Place*.

#### Conditional Use Permit for Alcohol

Pursuant to §17.124.060, when evaluating a CUP, the Planning commission must consider the following characteristics of the proposed use:

- A. Operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts).
- B. Availability of adequate public services and infrastructure.
- C. Potential impacts to the natural environment.
- D. Physical suitability of the subject site for the proposed use in terms of design, location, operating characteristics, shape, size, topography.

The Planning Commission may attach conditions of approval to a use permit to achieve consistency with the general plan, local coastal program, and zoning code.

Chief of Police Andy Dally reviewed the application, conducted a site visit, and made findings that support the approval of the CUP for alcohol sales. Support is provided with the condition that each prospective business must obtain its own PCN letter from Capitola Police prior to obtaining an ABC License. Businesses must also participate in employee alcohol training and workshops, to the satisfaction of the Police Department. These requirements are outlined in Condition #6 and 7.

The proposed hours for alcohol sale and consumption would be the same as primary mall operating hours, which may vary by season, holiday, or day of the week. Currently, mall operating hours are 10am to 7pm Monday through Saturday and 11am to 6pm Sunday. Alcohol beverages will be sold in containers that are easily distinguishable from containers use in the sale of non-alcoholic beverages.

In addition to restaurant staff training and monitoring, mall security will be directed to increase monitoring of the food court and increase staffing on weekends and forecasted increases to mall foot traffic and/or alcohol sales. All licensees would be responsible for the shared premises, including any violations of the law occurring on the licensed premises.

Planning staff considered but did not include a limiting the total number of active licenses to a number less than the total number of eligible tenant spaces.

#### Parking

The proposal does not include modifications to existing parking. Areas utilized in the application are already permitted for restaurant uses and therefore is not considered an intensification of parking demand.

**CEQA:**

This project is categorically exempt under Section 15301 of the California Environmental Quality Act. The proposed project involves a Conditional Use Permit for potential future uses occupying an existing commercial structure with no expansion of use. No adverse environmental impacts were discovered during project review by Planning Staff.

**Recommendation:**

Staff recommends the Planning Commission **approve** application #23-0041 to allow mall food court tenants to serve beer and wine as conditioned and based upon the findings below.

**Attachments:**

1. 1855 41<sup>st</sup> Avenue – Food Court Site Plan
2. 1855 41<sup>st</sup> Avenue – Alcohol Management Plan
3. Food Court Tenant Suites
4. Police Letter of Support

**Conditions of Approval:**

1. The project approval consists of a Conditional Use Permit for the sale and consumption of beer and wine by Capitola Mall food court restaurants within the designated shared seating area. The project is located within the C-R (Regional Commercial) Zoning District. Eligible tenant spaces and the designated alcohol area is limited to the areas indicated on the final plans reviewed and approved by the Planning Commission on July 20, 2023, except as modified through conditions imposed by the Planning Commission during the hearing.
2. No open alcoholic containers may leave the designated area.
3. Alcohol sales are permitted during primary mall operating hours unless the California Department of Alcoholic Beverage Control places stricter requirements.
4. In order to be eligible, businesses must be considered a restaurant (bona fide eating place) by the Capitola Planning Director and the California Department of Alcoholic Beverage Control (ABC). All uses that sell or dispense alcoholic beverages shall require an ABC license.
5. Prior to obtaining an ABC license, each participating business shall obtain a letter from the Chief of Police either a Letter of Public Necessity and Convenience or written determination that a PCN is not required.
6. Businesses seeking ABC licenses shall participate in an employee program, with curriculum that includes not only business-related activities but also a section on ABC laws. Businesses must show ongoing commitment to training employees and agree to take part in future ABC LEADS (Licensee Education on Alcohol and Drugs) workshops.
7. The applicant shall install visible signage at all exits from the Food Court stating that “no alcoholic beverages beyond this point” and any additional signage required by local, state, or federal law or code.
8. Alcoholic beverage supplies, including kegs, and unsold alcohol products shall be kept indoors and in secure locations and at all times.

9. The Planning Department shall perform a final inspection, prior to initiating beer and wine sales for each tenant. Prior to the Planning Department final inspection, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director.
10. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
11. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.156.080.
12. Upon evidence of non-compliance with conditions of approval, applicable municipal or ABC 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 in the manner provided in CMC §17.156.110.

**Conditional Use Permit Findings:**

**A. The proposed use is allowed in the applicable zoning district.**

Community Development Staff and the Planning Commission have reviewed the project use and determined the proposed alcohol use is consistent with Conditionally permitted uses within the C-R (Regional Commercial) zoning district.

**B. The proposed use is consistent with the general plan, local coastal program, zoning code, and any applicable specific plan or area plan adopted by the city council.**

Community Development Staff and the Planning Commission have reviewed the proposed Conditional Use Permit and determined it complies with all development standards and meets the intent and purpose of the C-R (Regional Commercial) zoning district.

**C. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and planned land uses in the vicinity of the property.**

Community Development Staff and the Planning Commission have reviewed the proposed use and determined it fits well with the existing food court and commercial center.

**D. The proposed use will not be detrimental to the public health, safety, and welfare.**

The Community Development Department, Police Department, and the Planning Commission have reviewed the proposed use and determined it will not be detrimental to the public health, safety, or welfare. Conditions of approval have been included to carry out these objectives.

**E. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.**

The proposed use is located along within the Capitola Mall shopping center and is adequately served by existing services and infrastructure.

**California Environmental Quality Act (CEQA) Findings:**

- A. This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15301 of the CEQA Guidelines exempts the permitting, licensing, and minor alterations to existing private facilities. This project involves an existing commercial space with the addition of alcohol sales within the C-R (Regional Commercial) zoning district. No adverse environmental impacts were discovered during review of the proposed project.

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