

# Capitola Planning Commission

## Agenda Report



**Meeting:** July 20, 2023

**From:** Community Development

**Address:** 201 Monterey Avenue #C

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**Permit Number:** #22-0125

**APN:** 035-185-06

Revocation of a Conditional Use Permit for sidewalk dining at an existing restaurant (Castagnola Deli & Café) located within the Mixed-Use Village (MU-V) zoning district.

This project is in the Coastal Zone but is not appealable to the Coastal Commission.

Environmental Determination: Categorical Exemption 15321

Property Owner: Atlantis Properties

Representative: Daniel Castagnola Filed: 3.21.22

### **Background**

On September 6, 2007, the Planning Commission approved CUP #07-018 for a take-out deli to expand into the adjacent tenant space within the building. The combination of these two units is now what comprises Castagnola Deli & Café.

In 2020, the applicant received a Covid-19 Temporary Use Agreement approval by city staff to use a portion of the public sidewalk along the frontage and the private property on the side patio as a Covid-19 relief measure.

On July 21, 2022, the Planning Commission approved a Conditional Use Permit Amendment, Coastal Development Permit, and Design Permit to allow sidewalk dining, outdoor dining on private property, and beer and wine service.

The Covid-19 Temporary Use Agreements expired for all businesses at the end of September 2022. Invoices had been sent monthly for the temporary program. Rent for the sidewalk had been \$90 per month.

Starting in the fourth quarter of 2022, the Finance Department began to invoice businesses with dining decks or sidewalk dining quarterly for the permanent program. There also was a raise in rates with permanent program. For the subject property, rent was increased to \$324 quarterly (\$108 per month). The owner did not pay the initial quarterly invoice.

Since the initial quarterly invoice in 2022, the business has been past due on sidewalk space rental and lacks a certificate of insurance. The CUP for the to-go deli, sale of beer and wine, and the outdoor dining on private property are in compliance.

### **Discussion**

Over the course of the past 10 months, City staff has sent five written notices attempting to collect the debt and has met with the owner on multiple occasions (Attachment A: Timeline). Throughout this time, staff waived January rent due to the storms, waived all late fees, and offered to work

out a payment plan to prevent permit revocation. On June 29, 2023, the owner informed staff of the decision to remove the sidewalk dining. The sidewalk furnishings were removed the following day.

Per the Village Outdoor Dining Policy (I-36), right of way tenants must pay \$3,400 annually for parking spaces. This approximates to \$18 per square foot, which is the rate applied to sidewalk dining tenants. The business was leasing 72 square feet (\$1,296/year).

The account is carrying an overdue negative balance of \$1,312 (without late fees) and the owner has not provided a current certificate of insurance. The owner has provided a single partial payment of \$200 since September 2022. Space rent and certificates of insurance are requirements of the conditions of approval. Section 17.156.110 (Permit revocation) requires that the review authority that originally approved a permit is the authority that must revoke the permit if findings for revocation can be made. The sidewalk dining is currently under review for permit revocation.

The CUP for the to-go deli, sale of beer and wine, and the outdoor dining on private property are in compliance. These permits will remain active and not be impacted by the revocation of the sidewalk dining.

#### **CEQA**

The project is categorically exempt under Section 15321 of the California Environmental Quality Act. Actions to revoke a lease or permit by a regulatory agency are exempt from CEQA.

#### **Recommendation**

Staff recommends the Planning Commission revoke the sidewalk dining portion of the existing Design Review, Conditional Use Permit, Coastal Development Permit approvals based on the Findings below that the owner has not complied with conditions of approval.

#### **Attachments**

1. Timeline
2. Invoice Q4 – 2022
3. Delinquent Letter 12.09.2022
4. Invoice Annual – 2023
5. Courtesy Letter #1 – 03.10.2023
6. Courtesy Letter #2 – 03.24.2023
7. Email final direction – 05.31.2023

#### **CONDITIONS**

##### **Conditional Use Permit Conditions of Approval**

1. The project approval consists of a Coastal Development Permit, Conditional Use Permit and Design Permit for the sale of wine and beer, ~~sidewalk dining~~ and outdoor dining in the side patio dining. The original CUP application #07-048 was approved on September 6, 2007, by the Planning Commission. An amendment to the CUP application #22-0125 was approved by Planning Commission on July 21, 2022. The Planning Commission revoked the sidewalk dining portion of the permit on July 20, 2023.
2. There shall be no more than six seats provided inside the restaurant.
3. Outdoor dining is permitted in an eight foot by 11 foot space in the side patio located within 201 Monterey Avenue; ~~and three, two foot by two foot bistro tables immediately adjacent to~~

~~the building within the public sidewalk. The tables, chairs, and umbrellas shall not interfere with a required five-foot sidewalk clearance. The table nearest the north entrance shall be limited to two opposing chairs parallel to the sidewalk. Tables, chairs, and umbrellas are prohibited on the public sidewalk.~~

4. Any significant modifications to the size and appearance of the structure must be approved by the Planning Commission. Similarly, any significant change to the use itself, or site, must be approved by the Planning Commission.
5. The application shall be reviewed by the Planning Commission upon evidence of non-compliance with conditions of approval or applicable municipal code provisions.
6. Outdoor dining may occur between 7 a.m. and 10 p.m. seven days a week.
7. The applicant shall maintain a current business license to operate the business.
8. Beer and wine consumption shall be limited to inside the restaurant and the patio area. No beer and wine consumption shall be allowed within the public right of way sidewalk dining.
9. Signage shall be maintained at the entry/exit to the restaurant and patio stating that "consumption of alcohol prohibited beyond this point ~~in sidewalk dining~~".
10. No new lighting or signs are approved with this permit.
11. Amplified sound is prohibited outside the building.
12. A restroom shall be available to customers at all times during business hours.

#### **Sidewalk Dining Conditions of Approval**

- ~~13. The Covid-19 temporary use permit for outdoor dining expires on September 15, 2022. To utilize the sidewalk dining after September 15, 2022, the applicant shall complete a revocable encroachment agreement, in a form provided by the Public Works Department, for all approved privately installed improvements within the street right-of-way.~~
- ~~14. Prior to use beyond September 15, 2022, 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.~~
- ~~15. The sidewalk dining shall comply with all applicable requirements of Capitola Municipal Code Section 17.96, the Zoning Code, the revocable encroachment permit, and all other applicable laws, administrative policies, rules, and regulations.~~
- ~~16. The outdoor dining shall be consistent with the Local Coastal Program and not adversely impact coastal resources, coastal access, and coastal views.~~
- ~~17. Materials and Furniture. The sidewalk dining must utilize high quality, durable materials that are compatible with surrounding development and can withstand inclement weather. The~~

~~application included black wrought iron tables and chairs, as well as two commercial grade umbrellas. The tables, chairs, and umbrellas approved within this permit must be well maintained. Any visible signs of weathering (fading, rust, holes, etc.) shall be addressed immediately through replacement or maintenance. Faded umbrellas shall be replaced with a UV rated fabric and not include logos, labels, or advertising. Upon Planning Commission approval, the property owner will order new umbrellas to replace the existing faded umbrellas.~~

- ~~18. 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.~~
- ~~19. Signs. No new business signs are included in the application.~~
- ~~20. Stormwater Drainage. The sidewalk dining must allow for adequate stormwater drainage. Sidewalk dining areas shall not block the drainage flow along the gutter line. Sidewalk dining shall not block access into any drain inlet or other drainage/stormwater facility.~~
- ~~21. Utilities. The sidewalk dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.~~
- ~~22. Trash and Maintenance. The outdoor dining 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~~~~
- ~~23. Sound. Music and amplified sound are not allowed in an outdoor dining area.~~
- ~~24. Hours of Operation. Outdoor dining may occur between 7 a.m. and 10 p.m. seven days a week.~~
- ~~25. 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.~~
- ~~26. 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.~~

### **Permit Revocation Findings**

- 1. The applicant or property owner has altered the circumstances under which the permit was granted to a degree that one or more of the findings required to grant the original permit can no longer be made.**

The account has been passed due for ten months and the City has not received a current insurance certificate in 2023. Per Section 17.96.170 Outdoor Dining in the Public Right

of Way is available to businesses that are in “good standing”. Good standing is defined as the property has operated in compliance with city standards within the past 24 months. The business is not currently in “good standing”.

**2. Permit issuance was based on misrepresentation by the applicant, either through the omission of a material statement in the application, or in public hearing testimony.**

The owner understood the conditions of approval and the requirements. No misrepresentation was made by the applicant.

**3. One or more conditions of approval have been violated or have not been complied with or fulfilled.**

The owner has not completed and kept current with conditions #13 and #14. Maintenance of acceptable insurance and lease payments is a requirement of the Permanent Encroachment Permit.

**4. The use or structure for which the permit was granted no longer exists or has been discontinued for a continuous period of at least twelve months.**

This finding is not applicable.

**5. The applicant or property owner has failed or refused to allow inspections for compliance.**

This finding is not applicable.

**6. Improvements authorized by the permit are in violation of the zoning code or any law, ordinance, regulation, or statute.**

The owner has removed the sidewalk dining furniture and communicated an intent to abandon the sidewalk dining permit. No further violation exists at the property.

**7. The use or structure is being operated or maintained in a manner which constitutes a nuisance.**

The owner has removed the sidewalk dining furniture and communicated an intent to abandon the sidewalk dining permit. No nuisances exist at the property.

Report prepared by: Brian Froelich