

Capitola Planning Commission

Agenda Report



Meeting: December 1, 2022

From: Community Development Department

Subject: 123 Monterey Avenue

Permit Number: 22-0391

Location: Sidewalk in front of El Toro Bravo

Coastal Development Permit, Design Permit, and Major Encroachment Permit for Sidewalk Dining at 123 Monterey Avenue in the Mixed-Use Village zoning district.

Environmental Determination: Categorically Exempt

Property Owner: Delia Rey

Representative: Jon Baron, Business Owner

Applicant Proposal:

El Toro Bravo is pursuing approval of Design Permit, Coastal Development Permit (CDP), and Major Encroachment Permit for sidewalk dining. The dining area is proposed in front of El Toro Bravo at 123 Monterey 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.

Analysis:

Restaurants located in the Mixed-Use Village zoning district along Monterey Avenue, Capitola Avenue, and on the Capitola Wharf are eligible for sidewalk dining permits. El Toro Bravo is proposing a sidewalk dining area with a mix of the prototype furniture, umbrellas, heaters, and lighting with a custom enclosure and planters. The overall design incorporates a 32.5 inch tall Trex perimeter enclosure in a horizontal configuration. The proposed color for the Trex is Rope Swing which is a light tan. The string lights are proposed to be attached inside the enclosure along the edge, rather than overhead.

Originally, the applicant submitted a plan with a redwood enclosure (rather than Trex) to be painted to match the building. Staff is recommending that the Planning Commission approve the proposal with the originally proposed redwood painted to match.

The following Operating and Development Standards apply to sidewalk dining:

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 sidewalk dining area only.

2. Sidewalk Width. Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least: 5 feet in the MU-V zoning district; and 4 feet in all other zoning districts.

Staff Analysis: The proposed sidewalk clearance is five feet clear from the curb with two necessary improvements. Currently, there is a City street sign with parking requirements located approximately 8 inches into the sidewalk from the curb. The City will relocate the sign to the edge of the curb.

3. Sidewalk Dining Areas. Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation (fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.

Staff Analysis: The restaurant serves alcohol and is proposing a Trex enclosure that is 32.5" tall. The interior space includes tables, chairs, umbrellas, heaters, planters, and string lights.

4. 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.

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

Staff Analysis: Public Works has reviewed the utilities for this project and has noted that the pole sign will be relocated.

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 #12 requires this standard be met.

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

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

8. Hours of Operation. Outdoor dining 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 outdoor dining for special events and holidays.

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

9. 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 #15 requires this standard be met.

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

Staff Analysis: The applicant is proposing to use a Trex composite for the enclosure. They have been advised by a contractor that Trex is durable and will minimize maintenance. Trex decking used as a horizontal walking surface complies with the materials requirements of the Outdoor Dining Ordinance, however, proposing Trex as the "primary visible material:" presents an issue with compliance to section 17.96.170 G 12. Originally, the applicant submitted a plan with a redwood enclosure to be painted to match the building. Staff is recommending that the Planning Commission approve the proposal with the originally proposed redwood painted to match.

The proposed furnishings are prototype selections designed for outdoor use and built primarily of metal. Attachment 2 includes a list of the proposed furnishing, fixtures, and equipment followed by images and descriptions of each product. The applicant would like to incorporate string lights mounted on the interior of the enclosure and propane heaters from the prototype.

To ensure ongoing quality and maintenance, condition of approval #16 requires the outdoor dining area to 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.

11. 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: El Toro Bravo is in good standing.

12. CDP Recertification. All CDPs issued for outdoor dining permits require recertification by the City Council within three years a 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. Staff anticipates a recertification hearing for all Capitola outdoor dining permits in November of 2025.

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 weighing 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 outdoor dining, in a limited implementation, are a net benefit to the Capitola Village and enhance visitor and resident opportunities to enjoy the unique and charming Village and beach area.

Recommendation:

Review the Sidewalk Dining Design and consider approval of the Design Permit, CDP, and Major Revocable Encroachment Permit consistent with the draft conditions and findings. Also, consider approving the proposed enclosure to be constructed of redwood, painted to match the building, and amending condition #1.

Conditions of Approval:

1. The project approval consists of a Coastal Development Permit and a Design Permit for a sidewalk dining area primarily utilizing the design that has been authorized by the Planning Commission on July 21, 2022. The proposed custom items include a Trex enclosure and planters. The 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 sidewalk dining permit may be conveyed or assigned by the applicant during a sale to the new property owner without losing the approval.
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, 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 construction 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 sidewalk dining area 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 sidewalk dining area.
11. Utilities. All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
12. 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.
13. Sound. Music and amplified sound are not allowed in an outdoor dining area.

14. 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 outdoor dining for special events and holidays.
15. 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.
16. Materials and Furniture. The sidewalk dining area shall have high-quality, durable materials that can withstand inclement weather. All approved infrastructure shall be maintained including but not limited to decks, railings, walls, planters, 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.
17. All outdoor 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.

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 sidewalk dining 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 sidewalk dining area is compliant with the LCP. The current program for sidewalk dining and street dining decks was certified by the Coastal Commission in June 2022.
- 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 sidewalk dining area 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 sidewalk dining area will maintain a quality aesthetic with regular maintenance.
- 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 a sidewalk dining area 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 on within public right of way within 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 the public right of way in the mixed-use village zoning district. The sidewalk dining areas expand coastal access opportunity. The sidewalk dining area 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 sidewalk dining area that will not negatively impact low-cost public recreational access.

E. The project maintains or enhances opportunities for visitors.

The project involves a sidewalk dining area and will not negatively impact visitor serving opportunities. The sidewalk dining will enhance visitor experience providing additional opportunities for dining with views.

F. The project maintains or enhances coastal resources.

The project involves a sidewalk dining area and will not negatively impact coastal resources. On busy beach days, the additional seating will provide more opportunities for visitors to dine outside 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 sidewalk dining 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 sidewalk dining permit 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 outdoor dining areas, in a limited implementation, are a net benefit to the Capitola Village with enhanced visitor and resident opportunities to enjoy the unique and charming Village and beach area.

Attachments:

1. Sidewalk Dining plan set
2. Furnishings Specifications