

To: Capitola Planning Commission  
Meeting Date: October 6, 2022  
Address: 401 Capitola Avenue  
Permit Number #22-0282  
APN: 035-131-11

Dear Members of the Capitola Planning Commission and City Staff,

I am Amy Cheng, the owner of 401 Capitola Avenue and the Applicant for this matter.

Thank you for the opportunity to address the Staff Report pertaining to my proposal.

The Staff Report states that my application requires two entitlements:

1. A Conditional Use Permit Modification to establish a “bar and lounge serving beer and wine” in the MU-N zoning district.
2. A parking variance to expand customer area from six seats to a plan that fully utilizes the front porch and interior customer area with proposed seating for 31 customers.

In response, I disagree with both points.

1. I disagree with and object to the characterization of my proposed use for this location as a “bar and lounge” (pour room.) (Please note that I also take objection to the wording on the City’s green Notice of Public Hearing.)

2. I disagree with the statement that this application requires a parking variance, in light of the passage of Assembly Bill (“AB”) 2097, which was approved by the Governor on September 22, 2022 and Filed with the Secretary of State on September 22, 2022. AB 2097 amends Section 65585 of and adds Section 65863.2 to the CA Government Code relating to land use.

In the alternative, I submit that if the Planning Commission determines that a minimum parking requirement still applies, the number imposed by the City’s Planning Department is incorrect.

## **DISCUSSION**

### **1. Proposed Use for location is an Eating Place, not a bar and lounge.**

I have applied for a **Type 41 On-Sale Beer and Wine- Eating Place** license through the California Department of Alcohol Beverage Control (“ABC”). A Type 41 license is defined as follows:

41: (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.

I am NOT applying for a license for a bar or tavern type use. Contrast my proposed use with a Type 42 license: On-Sale Beer and Wine – Public Premises:

42: (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.

The hours of operation for my establishment are requested to be 11:00 a.m. to 8:00 p.m. Minors are allowed to enter and remain. This is a family friendly business for all ages. The early close time of 8:00 p.m. limits noise and other impacts to the surrounding businesses and neighbors such as lighting or traffic generation. My business is next door to the Fire Station and across the street from the Police Department and adjacent to the RTC- railway/trestle open space. There is only one vacation rental home behind me. The fact that there is only one vacation rental residence near me and the proximity to law enforcement further ensures a lack of impact.

My proposal is for a business that is a bona fide eating place. I will have suitable kitchen facilities and provide the following meals (not ancillary food, but rather substantial meals for consumption on premises or take out):

#### MENU

##### DAILY FRESH MADE

Daily Fresh Soup  
Variety Crackers & Cheese Plates  
Daily Fresh Specialty Rolls  
Beef Kimbap Rolls  
Chicken Kimbap Rolls  
Spam Kimbap Rolls  
Tofu & Fish Cake Kimbap Rolls  
Shrimps Spring Rolls  
Chicken Rice Bowl  
Daily Fresh Desserts

Please note that the Capitola Municipal Code also confirms my proposed use of the premises as an “eating and drinking establishment” such as a restaurant, café, or take-out food and beverage, rather than a “bar and lounge”. As you can see from the definitions taken from Section 17.160.020 of the Capitola Municipal

Code, a “bar and lounge” is a business “devoted to serving alcoholic beverages”, “in which the serving of food only incidental to the consumption of such (alcoholic) beverages” and describes such places as “cocktail lounges, nightclubs, taverns.” This description brings to mind bars that primarily serve alcohol in a cocktail lounge, nightclub or tavern environment, which might serve baskets of pretzels or nuts ‘incidental’ to the consumption of the alcoholic beverage.

This ‘bar and lounge’ description is not at all what the proposed use of my premises is contemplated to be, or intended to be, or will be.

Capitola Municipal Code 17.160.020

1. “Eating and drinking establishments” means businesses primarily engaged in serving prepared food and/or beverages for consumption on or off the premises.
  - a. “Bars and lounges” means a business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Includes cocktail lounges, nightclubs, taverns, and other similar uses.
  - b. “Restaurants and cafes” means a business establishment serving food and beverages to customers where the food and beverages may be consumed on the premises or carried out and where more than one hundred sixty square feet of public area is open to customers. Includes full service restaurants, fast-food restaurants, coffee shops, cafes, and other similar [eating and drinking establishments](#).
  - c. “Take-out food and beverage” means establishments where food and beverages may be consumed on the premises, taken out, or delivered, but where the area open to customers is limited to no more than one hundred sixty square feet. Includes take-out restaurants, take-out sandwich shops, limited service pizza parlors and delivery shops, and snack bars. Also includes catering businesses or bakeries that have a storefront [retail](#) component.

The Staff Report determines this is a bar and lounge based on the following:

1. The proposed use is greater than 160 sf of customer area – Response: this is not a criteria for the definition of bar and lounge.
2. The proposed use includes 31 seats – Response: this is not a criteria for the definition of bar and lounge.

3. This utilizes a self-pour tap system – Response: this is not a criteria for the definition of bar and lounge.

4. Will utilize at least 50% of the 32-tap system for alcoholic beverages – Response: this ignores the fact that meals will be served as well as numerous non-alcoholic beverages

My current business has had approval of the plans for the Conditional Use Permit (“CUP”) in the Category “Take-Out Restaurant.” In my understanding, a variance was given to have no parking on site. My business is family friendly- with limited evening hours (closing at 8 pm) where minors are welcome. My proposed use does not fit the Capitola Municipal Code definition of bar and lounge, it does not fit the ABC Type 42 license for bar, tavern, and it does not fit the actual image of a bar, cocktail lounge, nightclub, tavern etc. that ‘we know when we see it.’

## **2. A Parking Variance is no longer needed.**

AB 2097 was passed and approved by Governor Newsom on September 22, 2022 and filed with the Secretary of State the same day. It has been codified as law in Government Code Section 65585 and adds Section 65863.2 to the CA Government Code relating to land use.

AB 2097 does not just apply to housing developments. It was contemplated to “make housing cheaper and more abundant, help mom ’n’ pop restaurants get started, let architects reuse historic buildings, and make the state’s neighborhoods more walkable.” Before AB 2097, local laws required gyms, offices, stores, cafes, restaurants, homes etc. to come with a certain number of parking spots. Now, with the governor’s approval, those requirements disappear within a half-mile of regular transit service, effectively ending parking minimums. No longer are buildings frozen out of “adaptive reuse” because of parking requirements.

The new law, codified in Government Code Section 65863.2, states:

(a) A public agency shall not impose or enforce any minimum automobile parking requirement on a residential, commercial, or other development project if the project is located within one-half mile of public transit.

The only exception to this law is if not imposing parking requirements would have a substantially negative impact on the city meeting its regional housing need number or other housing development related impacts. There are no such impacts at issue with this proposal.

Public transit” means a major transit stop as defined in Section 21155 of the Public Resources Code, (“PRC”) which refers to 21064.3.

21064.3 of the PRC defines “Major transit stop” means a site containing **any** of the following:

- (a) **An existing rail or bus rapid transit station.**
- (b) A ferry terminal served by either a bus or rail transit service.

Therefore it is my contention that no minimum parking requirement can be legally imposed.

### **3. In the alternative, if a parking minimum is still imposed, the City’s suggested number of parking spots required is incorrect.**

I have a lawful CUP under the prior zoning ordinance, which allowed takeout business without additional parking. Original building permit#For this proposal, City Planning staff is holding me to the standard of parking ratio imposed on bars and lounges. That ratio is 1:60 square feet (“sf”) for customer area and 1:240 sf for other areas. However a take-out restaurant has a parking ratio of 1:300 sf, which for these premises requires 4 parking spaces – if you include the total square footage of the building. For this proposed change, the City indicates that 8 additional spaces be added, because the City is using the 1:60 sf ratio of a bar and lounge.

I submit that that is an inaccurate characterization and therefore these 8 additional spaces are incorrectly imposed. The staff report notes that “the customer area of the existing building (interior plus front porch) is 554 sf.” (Page 2 of the Staff Report.) That suggests a parking requirement of two spots if reviewed under the current Zoning Ordinance. Further I submit that Planning Commission can grant any parking variance required, as this use is of minimal impact and compatible with neighboring land uses. In my understanding, when “Charley and Co.” built the building and final permit#BP 2014-228 in 2015, a variance was given to have no parking on site.

### **4. The Planning Department’s allegations regarding a history of code violations and ABC concerns are red herrings and disingenuous.**

The Planning department notes the following code enforcement actions: a trash enclosure that didn’t conform to approved plans, concrete forms installed for a patio area that was not approved, and banners in front of the house without permits. After inspections Planning Staff notified me of these issues and I immediately took corrective action and resolved the noticed issues. There are no open code violations. To inflate this to an allegation of a history of code violations is overstating and I suggest disingenuous. Planning notes in the report that “no calls to Police have been made by or to the Capitola Tap House.” (Page 3.)

Planning Staff also claim that ABC had concerns as to how id's would be checked for alcohol sales and whether the kitchen had the ability to meet the Type 41 requirement for being a restaurant. I suggest that these speculations on the part of the ABC don't rise to the level of unmitigable issues that result in an unsupportable project. The kitchen is adequate to provide the meals that have been outlined on the menu. Further I will employ sophisticated self-pour technology involving a card key that will enable us to only allow people who have shown id's that they are at least 21 years of age to use the taps, and manage and control alcohol consumption by keeping track of consumption, measuring portion drink sizes, and cutting off self-pour after two standard drinks per person. Notably ABC stated that they were not concerned with the front porch area being used for consumption.

This is not a 'bar and lounge.' This is a family friendly eating establishment business, with limited hours. Noise, lighting, traffic generation etc. are accordingly mitigated and not significant impacts. My neighbors are primarily the RTC open space, the Fire Department and City Hall and the Police Department, with the exception of one vacation rental house. I abut the Mixed Use Village zoning with many nearby commercial businesses. I am much closer to the MUV and already run a Kombucha business establishment here with no negative impact to the residential transitional area. This proposed use would not change this. This is a compatible use for the area. It will not negatively impact surrounding uses or public health, safety and welfare.

The Staff Report notes that this project is categorically exempt under section 15301 of CEQA – it is a “negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. This project involves no new permanent physical improvements and does not require a Building permit. The permit will involve a minor change in operations and utilization of existing spaces. No adverse environmental impacts were discovered during review of the proposed project.” (Staff Report Page 6, emphasis added.)

Therefore it is compatible with the General Plan and I respectfully request that the amendment to the CUP should be granted.

Thank you for your consideration,

Amy Cheng