

## **Moss, Julia**

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**From:** Lynne Lampros <lynnelampros@gmail.com>  
**Sent:** Tuesday, March 21, 2023 3:34 AM  
**To:** Froelich, Brian; Moss, Julia  
**Cc:** Amy Cheng  
**Subject:** 401 Capitola  
**Attachments:** Cheng, Amy city council hrg response to staff report 3.23.23.docx

**Follow Up Flag:** Follow up  
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Please submit this Response to Staff Report with the Agenda Packet for March 23, 2023 Item 8. General Government/Public Hearings C. 401 Capitola Ave.

Thank you,

Lynne Lampros  
on behalf of Amy Cheng

Response to Staff Report for Capitola City Council Meeting March 23, 2023

Subject: 401 Capitola Avenue Appeal of Denial of Application #22-0282  
and Consideration of Alternative Proposals

From: Amy Cheng

To the Honorable City Council of the City of Capitola,

Thank you for your consideration of this matter and thanks to Staff for their time on this project.

I would like to respond to the Staff Report for this Agenda item.

1. Appeal of Planning Commission Denial of Application #22-0282

A. Parking:

Staff cites to Capitola Municipal Code Section 17.76.020 (B) (b) [*sic*, actually 17.76.020 (B) (2)] for the proposition that the change of existing use requires additional on-site parking unless a variance is granted.

Applicant would like to point out Capitola Municipal Code Section 17.76.050- On Site Parking Alternatives, which states,

**A. Purpose. This section identifies alternatives to required on-site parking to:**

- 1. Allow for creative parking solutions;**
- 2. Enhance economic vitality in Capitola;**
- 3. Promote walking, biking, and use of transit; and**
- 4. Encourage the efficient use of land resources consistent with the general plan.**

These alternatives to required on-site parking in this section are specifically available only to uses located outside of the MU-V zoning district. 401 Capitola is located just outside the MU-V zoning district.

Therefore Applicant submits that it is appropriate and in accordance with the Municipal Code to consider these alternatives and make the findings for a variance from the parking requirements of a CUP for a restaurant/café.

As Applicant stated at the Planning Commission, this business is located very near the two large public parking lots. Further it is appropriate to consider foot traffic, biking, shuttle and ride share/public transportation in consideration of the alternatives to required on-site parking.

#### B. Improper consideration of the kitchen and food plan:

The Staff report notes that the Planning Commission discussed the shortcomings of the application, including the proposed kitchen and business plan. However the Staff report states that the Commission's denial did not include reference to the kitchen or business plan.

Applicant submits that is somewhat spurious. Denials are phrased succinctly, (as findings being made or not) but the grounds for a Commission's ruling are articulated during discussion. In this case, Applicant notes that both Commissioners Christiansen and Routh emphasized the kitchen and food plan in their decisions. Commissioner Routh led off his comments with that. Commissioner Christiansen entirely premised her decision on the kitchen and food plan, stating that she supported the proposal for alcohol and the amount of seats, but that she could not support the project because the kitchen and food plan needed 'fleshing out.' (See video of Planning Commission hearing on 12/1/22 at the 1:44 point.)

#### C. Unique circumstances remain the same:

This business currently has a parking variance of 4 spots as either a retail or take-out establishment. The Application #22-0282 seeks to expand seating to 26 seats inside and outside on the front porch, which is an intensification that requires 7 additional parking spots. Staff states that "The parking variance issued in 2014, waiving the parking requirement for four parking spaces, is not applicable to the current application, which asks the City to

waive the parking requirement for seven spaces.” This sentence in the Staff Report suggests that the analysis here is contingent on the numbers being the same. That is not Applicant’s point or argument.

Applicant’s point is that the conditions that supported the granting of the variance in 2014 remain the same today. This location has difficult, unique physical circumstances that existed in 2014 when the parking variance was granted for this business as a retail-clothing store, because it could not provide four onsite parking spots. Those difficult and unique physical constraints still exist. Therefore the conditions in support of a variance today – the lack of ability to provide onsite parking in this location - are the same as they were in 2014.

Therefore Applicant does think the findings can be made and it is appropriate for City Council to overturn the Planning Commission’s denial of the project in Application #22-0282.

## 2. Alternate Proposals

If the Council does not overturn the Planning Commission’s denial, Applicant has alternative proposals and is open to proposals suggested by the Council. All the proposed alternatives include the expanded food menu that is referenced in the prior Application and Appeal package filed for this hearing. The goal of all the proposals is to enable Applicant to expand her business draw while also ensuring enough turnover to maximize the amount of customers, done in a safe, family friendly way that promotes community and is a benefit to the City.

A. Remove the request for a parking variance, maintain the six seats and convert NO MORE THAN 50% of the existing taps to beer/wine/hard kombucha for self pour consumption on premises, as is the kombucha and coffee now.

Staff claims this alternative should be denied as it would change the business to a bar or lounge by virtue of its tap system.

Applicant disagrees. If Council members visited the premises or looked in the windows it is apparent that this light, bright, almost sterile interior is

more akin to a juice bar or yogurt shop than a bar/lounge. It is open to minors and has limited hours, closing by 8 pm. It is not a place where people are going to ‘belly up to the bar’ for hours.

Staff report states that a tap system is inherently incompatible with a take out business model because of open container laws and the fact that tap systems are typical of bars, lounges, beer gardens and full service restaurants, where customers intend to stay in the business for longer periods of time. These are not well-founded arguments and there are ways to address these concerns.

Open container issue:

Castagnola Deli & Café has a CUP as a takeout establishment but it also has an ABC license 41, which is what is sought for the business at 401 Capitola Avenue. That license category with the ABC is for an “On-Sale Beer & Wine – Eating Place.” Castagnola is allowed to sell canned beer and wine from a refrigerator. As a takeout deli, this should draw the same concerns regarding open container laws as Staff articulates here. However it is allowed at Castagnola’s. Applicant submits that the concern regarding open container are easily addressed with signage and staff enforcement of “No Alcohol Past This Point” or “No Open Containers Past This Point.”

Length of time issue:

There is no issue right now with the length of time Applicants’ customers can stay on premises consuming non-alcoholic kombucha or coffee. Therefore the length of time a customer is on premises is not a fair criterion to convert a takeout establishment to a bar/lounge.

If the concern with length of time on premises is the amount of alcohol consumption, that can be addressed and enforced by the RFID technology that Applicant has proposed since she first began this process in September 2022. Applicant proposes the RFID technology to ensure the limit of two alcoholic drinks per customer. This limitation can be consistently enforced by the fact that the taps will shut off for the customer after two pours.

Applicant is open to Council suggestion as to the size and number of pours that is acceptable, as well as the number of taps that could be converted.

B. Remove the parking variance, maintain six seats and convert NO MORE THAN 50% of the taps and sell prefilled containers of the beverages from the taps from a refrigerator, while also allowing on-site consumption of self-pour sample/flight size tastings (limited in size and number as Council deems appropriate) and of the prefilled containers from the refrigerator.

Staff's basis for denial of this alternative is again that a tap system is not compatible with a take-out establishment. Applicant responds that her business has and will have far different "business patterns, scale, and impacts" than a bar/lounge. Thus the fact that there are taps at the premises should not be the only measure of the character of this establishment. The totality of the circumstances should be evaluated.

C. Remove the parking variance, maintain six seats and convert NO MORE THAN 50% of the taps and sell prefilled containers of the beverages from the taps from a refrigerator, allowing on-site consumption from the prefilled containers from the refrigerator, but no self pour consumption of alcohol.

Staff's response to this proposal is to state that the 'chain of custody' of a prefilled container is inconsequential and the business would still be functioning as a bar/beer garden/pour room. Applicant disagrees. The containers could be prefilled in the kitchen, before opening hours, away from customers. Some of the taps are located only in the kitchen, where only staff can access. This would not be an "on demand" pour into a container rather than a glass.

However this proposal would enable Applicant to realize more return on her investment in the tap system and offer a more unique experience to the customer.

### 3. Staff's Proposals:

A. Staff has stated they could support a model like Castagnola's – that is a refrigerator selling prefilled, commercially available cans and bottles of beer and wine. Applicant appreciates this offer. However Applicant submits that allowing customers to order food and kombucha or coffee from her taps and then also get a can of outside beer from a refrigerator is not substantially different from being able to get a bottle of a beverage that came from one of

the taps on the premises. And again, offering the beverages from the tap system helps realize more return on her investment in the tap system and distinguishes her business from others that simply sell cans that could be found in the local corner market.

B. Staff also proposed that if Applicant wanted to utilize her tap system for both alcoholic and non-alcoholic beverages than Staff would revoke her CUP as a take out establishment and only allow her a CUP as a retail establishment. Further Staff would only allow her to operate as sales for offsite consumption entirely of her food, non-alcoholic kombucha, coffee and alcoholic beverages. No onsite consumption of even the non-alcoholic kombucha or a cup of coffee.

Applicant suggests this is an unduly harsh alternative. Applicant is not trying to become a market or liquor store. Applicant is trying to create a business that provides community and offers a unique service. Further Applicant notes that English Ales and Armida Winery are both classified as retail, and yet both operate closer to a bar/lounge than a retail store. Applicant realizes that they have different ABC licenses than Applicant is seeking. However the business patterns, scale and impacts are much closer to a bar/lounge than Applicant's business would be.

C. With regard to the question of the additional parking spaces, Applicant was not suggesting that they were going to be new construction on the premises immediately adjacent to her building. Applicant is in talks to lease three of the existing parking spaces under the trestle. Applicant seeks information from Staff as to how many more seats adding those three spaces could yield or asks Council to consider that the request for variance would be reduced by three spaces.

### Conclusion

Applicant is open to the Council's suggestions and wishes to again thank Council and Staff for all the time they have invested in this application.