

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA, CALIFORNIA DENYING APPLICATION #22-0282 FOR A CONDITIONAL USE PERMIT, PARKING VARIANCE, AND COASTAL DEVELOPMENT PERMIT OF FOR A PROPOSED RESTAURANT THAT SERVES BEER AND WINE AND PROVIDES NO PARKING LOCATED AT 401 CAPITOLA AVENUE (APN# 035-131-11) AND APPEAL APPLICATION #23-0030.**

WHEREAS, the applicant Amy Cheng, (“Applicant”) submitted an application for a proposed Conditional Use Permit, Parking Variance, and Coastal Development Permit to establish a restaurant that serves beer and wine on a property with no parking at 401 Capitola Avenue located within the MU-N (Mixed Use Neighborhood) zoning district. (“Project”); and

WHEREAS, the Project requires approval of a Conditional Use Permit, Parking Variance, and Coastal Development Permit; and

WHEREAS, the Planning Commission unanimously denied the project citing an inability to make findings for approval; and

WHEREAS, the Planning Commission of the City of Capitola did hold a duly noticed public hearing on December 1, 2022, at which time it considered all oral and documentary evidence presented, and voted to deny the Project by a 3-0 vote.

WHEREAS, the Applicant submitted a timely appeal on December 9, 2022.

WHEREAS, the City Council of the City of Capitola did hold a duly noticed public hearing on March 23, 2023, at which time it considered the Appeal, including all oral and documentary evidence presented.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Capitola as follows:

- A. The above recitals are true and correct and material to this Resolution.
- B. In making its findings, the City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

BE IT FURTHER RESOLVED THAT the City of Capitola City Council hereby makes the following findings regarding the Project:

**Conditional Use Permit Findings**

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

Restaurant businesses and alcohol sales are not permitted by-right in the MU-N zoning district and require a conditional use permit. A restaurant serving beer and wine that meets

parking standards is a potentially supportable proposal. The subject proposal includes an intensification of customer use areas from six seats to 26 seats while providing no on-site parking. Additionally, the by-right takeout nature of the existing business would be replaced with a dine-in food and beverage experience with 32 self-pouring taps that is conducive to customers staying longer periods of time and occupying more neighborhood and coastal access parking spaces. The combination of intensification of use in customer capacity and duration is not permitted in the zoning district and is counter to MU-N district purpose statement.

**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.**

The proposed use is not consistent with the General Plan or Zoning Ordinance, as discussed:

GP. LU-1.3 Compatible Development. Ensure that all new development is compatible with neighboring land uses and development.

**Staff Analysis:** The proposed development is not compatible without providing parking. There is no precedent for new or intensified land uses providing no parking. Additionally, the tap system proposed is out of scale for a restaurant of this size. With 32 taps, there is a tap for every 14 square feet of customer area proposed. The ratio of taps to customer area is more typical of an alcohol serving business than a restaurant.

GP. LU-4.1 Quality of Life. Ensure residential neighborhoods are walkable, safe, friendly, and provide a high quality of life for residents of all ages. Minimize unwanted noise and spillover parking in neighborhoods.

**Staff Analysis:** The proposal is relying on offsite parking exclusively while intensifying the parking demand. Surrounding areas will be impacted by parking spillover.

GP. LU-4.7 Planning Projects. Ensure that future planning efforts for non-residential areas carefully consider potential impacts on adjacent residential neighborhoods.

**Staff Analysis:** The subject property sits at a zoning boundary with residential zoning and is located along a transitional street from the Village north on Capitola Avenue to a less active and more residentially developed part of the city.

ZO. 17.20.010 B2 2. Mixed Use, Neighborhood (MU-N) Zoning District. The purpose of the MU-N zoning district is to allow for neighborhood-serving mixed use areas that enhance residents' quality of life. The MU-N zoning district contains an eclectic mix of retail, restaurants, and services for residents and visitors. A range of housing types close to nonresidential uses increases housing choices and supports a walkable community. Development in the MU-N zoning district will be carefully designed to complement its surroundings and minimize impacts on neighboring properties. Land uses will strengthen connections between destinations in Capitola, including the Village, Bay Avenue, and 41st Avenue

**Staff Analysis:** In 2014, the city has approved a parking variance for the subject property allowing the owner to operate a retail shop. In 2019, the Planning Commission approved a CUP for a takeout restaurant which has the same parking requirement and is not an intensification of use. With these approvals the city has determined the appropriate balance of uses and mitigation of impacts to the vicinity. The applicant is now proposing to intensify the building's use and introduce impacts that are out of scale with the vicinity, would set a new precedent, and cannot reasonably be mitigated.

ZO. 17.128.010 This chapter identifies the process to obtain a variance. A variance is a discretionary permit that allows for deviation from development standards in the zoning code. The city may grant a variance only when the strict application of development standards creates a unique hardship due to unusual circumstances associated with the property.

**Staff Analysis:** Planning Commission approved a parking variance for the subject property in 2014 and allowed the applicant a change of use in 2019 that maintained the 2014 variance. The applicant is now proposing to intensify parking demand from four to 11 spaces (net seven). The proposal is an exacerbation of nonconformity without mitigation. Approval of this proposal would call into question how the city regulates parking city wide. There is no identified hardship associated with the subject property. The applicant proposes a variance to allow a special privilege not enjoyed by other properties in the city.

The location is not in the Capitola Village. The area of Capitola Avenue between the trestle and Bay Avenue is described as transitional with a focus on residents' quality of life rather than visitor serving amenities like the MU-V zone and Capitola Village area. **This finding cannot be made.**

**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.**

The current takeout establishment with its limited capacity for customers is compatible with the existing land uses in the vicinity. The current operation has a correspondingly limited impact on parking and noise in the vicinity. Capitola's zoning ordinance and business licensing process has long held that retail facilities and takeout food and beverage establishments, in their limited capacity, were interchangeable and do not introduce new impacts. The proposal to intensify customer capacity, introduce beer and wine from a tap system, and provide no parking onsite is counter to Capitola's established zoning policy in these circumstances. **This finding cannot be made.**

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

Restaurant uses and beer and wine sales are conditionally permitted in the MU-N. The intensity of use and change of use to a sit-down establishment with 32 taps and no parking presents new and unmitigated impacts to public health, safety, and welfare to adjacent residents and businesses. **This finding cannot be made.**

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

**or planned services and infrastructure.**

The intensity of the proposed use is not adequately served by parking and proposes to transfer the full impact of the increased parking demand entirely offsite. The nearest R-1 zoned single family residence is approximately five feet away and over 60 residentially occupied properties are within 300 feet. The proposed use will have an impact to the daily life for these residents. The combination of parking deficiency, proximity to sensitive receptors, and the proposed intensity of use are not supported by services or infrastructure. **This finding cannot be made.**

### **Variance Findings**

- A. There are unique circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, that do not generally apply to other properties in the vicinity or in the same zone as the subject property.**

The lot size and shape was noted with the prior variance for four parking spaces granted in 2014. The applicant is now proposing a variance to exacerbate the existing parking deficiency without demonstrating a reason for reconsidering the prior variance approval. The city determined in the 2014 decision the appropriate parking variance for the property. **This finding cannot be made.**

- B. The strict application of the zoning code requirements would deprive the subject property of privileges enjoyed by other property in the vicinity or in the same zone as the subject property.**

Strict application of the zoning code is that the subject property is currently operating with a legal nonconforming status with an approved parking variance and is enjoying the privilege of a customer area larger than currently permitted. The property is not deprived an opportunity or privilege enjoyed by any comparable property in the MU-N zoning district. The proposal introduces a request for a new privilege that is not supported by the zoning ordinance or general plan and transfers the increased impacts of additional parking demand and business activity to offsite locations. **This finding cannot be made.**

- C. The variance is necessary to preserve a substantial property right possessed by other property in the vicinity or in the same zone as the subject property.**

The proposed variance is not necessary to preserve a substantial property right possessed by other property in the vicinity or in the same zone. The city has evaluated the property and the hardship related to parking and determined that previously granting a variance for four parking spaces was appropriate to allow the property to maintain similar rights and uses as other properties in the same zone. **This finding cannot be made.**

- D. The variance will not be materially detrimental to the public health, safety, or welfare, or be injurious to the properties or improvements in the vicinity or in the same zone as the subject property.**

Granting of the proposed variance would be detrimental to public health, safety, or welfare. The project presents noise impacts to the 63 sensitive receptors in the vicinity due to all parking demand for the project to be provided on or adjacent to surrounding properties. Noise associated with increased activity to and from vehicles parked in the neighborhood

would have an unmitigated negative impact on residences and businesses in the vicinity. **This finding cannot be made.**

**E. The variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity or in the same zone as the subject property.**

The granting of the parking variance would be a granting of special privilege by allowing an intensified use that requires seven additional parking spaces and provides none. **This finding cannot be made.**

**F. The variance will not have adverse impacts on coastal resources.**

The variance would have an impact on coastal parking resources due to displacing the entire parking burden on other parking locations. This would limit overall visitor parking opportunities. **This finding cannot be made.**

### Coastal Findings

**1. The project is consistent with the LCP land use plan, and the LCP implementation program.**

The proposed project is not consistent with LCP land use Policy I-1 “The intensity of new development shall be limited to the availability of parking and other alternative transportation systems, such as a shuttle bus and remote parking.” The proposed intensity of use necessitates parking that is not accommodated on site and displaces the burden to available public and street parking. The result is a reduction of coastal access for the public. **This finding cannot be made.**

**2. The project maintains or enhances public views.**

The proposed project has no permanent impact on views.

**3. The project maintains or enhances vegetation, natural habitats and natural resources.**

The proposed project has no impact on vegetation, natural habitats or natural resources.

**4. The project maintains or enhances low-cost public recreational access, including to the beach and ocean.**

The project has a direct impact on neighborhood parking and Village parking. The project displaces parking demand from onsite activity to be provided in offsite locations limiting options for low-cost public parking. **This finding cannot be made.**

**5. The project maintains or enhances opportunities for visitors.**

The project limits opportunities for coastal access to visitors by not providing parking or mitigating demand. The project results in a net loss for coastal visitor opportunities and access. **This finding cannot be made.**

**6. The project maintains or enhances coastal resources.**

The proposed project has no impact on natural or environmental resources. The project has a negative and unmitigated impact on coastal access for visitors by intensifying a land use without providing any parking. **This finding cannot be made.**

7. **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.**

LCP Policy I-1 requires that the city protect adjacent residential neighborhoods from parking intrusions while providing for public access to viewpoints and recreation areas. **This finding cannot be made.**

8. **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 will limit public access and impact recreation and visitor opportunities and experiences by impacting parking availability, which will overflow to other areas. The proposed intensification is not a priority development. **This finding cannot be made.**

NOW, THEREFORE, BE IT FURTHER RESOLVED that based on the above findings, the City Council of the City of Capitola hereby affirms the Planning Commission's decision to deny project application #22-0282 and appeal application #23-0030.

BE IT FURTHER RESOLVED that the City Council's action is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 ("Projects Which are Disapproved") because the City Council has denied the proposed Project.

AFFIRMED, and ADOPTED by the City Council of the City of Capitola, California, at a regular meeting thereof this 23rd day of March 2023 by the following vote:

**AYES:**

**NAYS:**

**ABSTAIN:**

**ABSENT:**

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MAYOR

ATTEST:

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CLERK