

DEC 9 2022

**Basis for appeal of Planning Commission denial of Application # 22-0282
Additional sheets**

A. Introduction

The business at 401 Capitola Ave currently has a CUP as a 'take out food and beverage establishment', pursuant to Capitola Municipal Code Section 17.160.020(c):

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.

Application #22-0282 sought a CUP for a restaurant/café (CMC 17.160.020(b)):

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.

The difference between the current CUP and proposed CUP was the addition of tables and seating from 6 seats in a customer area of 160 square feet to 26 seats in a customer area of 458 square feet, (Staff Report pg. 122) and the conversion of some¹ of the existing non-alcoholic taps to taps for beer and wine.

**B. The Staff Report Noted the Use is Allowable but the Focus for Denial was on
Parking.**

The Staff report stated that the proposed use is allowable in this location with a conditional use permit. The Staff Report states, "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." (Staff Report pg. 124, Conditional Use Permit Findings, emphasis added.)

The staff report, on pg. 121-122, "Local Coastal Plan Analysis," stated that:

¹ In the Staff presentation, it was erroneously suggested that all 32 existing taps were to be converted to wine and beer, and that the use was 'beverage first'. Applicant clarified that no more than 50% of those taps would be converted to wine and beer and the rest of the taps would remain non-alcoholic. Further the use looks beverage first because presently it is only beverage, however food service is desired, and thus this is an unfair characterization.

“An intensification of a land use requires a Coastal Development Permit (CDP) and consistency with the City’s Local Coastal Program (LCP), Land Use Plan and CDP findings. The proposed intensification of use is in contrast with this policy. Findings for consistency with the City’s LCP cannot be made as the proposal intensifies the use without parking. The increased demand on street parking and public parking will impact parking and beach access in the vicinity for visitors and existing businesses and residents.” (emphasis added.) Applicant notes that the impact to beach access was the impact on parking, not some other physical impediment to access.

The Staff report and presentation discussed compatibility of this project with neighboring land uses and again focused their position that the use was incompatible on the inability of this property to meet the parking requirement of 7 spaces.

“The location, size, design, and operating characteristics of a dine-in restaurant business with a 32 tap self-pour system for dispensing beer, wine, Kombucha, and cold brew coffee with no parking is not compatible with surroundings at this location.” (Staff Report pg. 122, emphasis added.)

C. Grounds for Appeal of the Planning Commission’s Denial

1. Two of the three Planning Commissioners based their decision on a part of the application that was not properly before them for their review.

The Staff report noted that, with regard to the sufficiency of the proposed kitchen facilities for a restaurant, that “determination is not made by local agencies and does not factor into the CUP, Variance or CDP analysis and findings.” (Staff Report pg. 120.)

The Staff report noted that, “If approved, the applicant would need to submit detailed kitchen plans, a more thorough menu, and operations plan to the county environmental health division for review.” (Staff Report pg. 119.)

In the Staff presentation at the hearing, at approximately the 1:15-1:17 mark, Staff informed the Commission that the issue of the ABC license, including the issue of the ‘bona fide eating establishment’ required was NOT part of the findings to make.

The Applicant, in her presentation, also stated that the issue of the sufficiency of the kitchen facilities was not properly in the purview of the Planning Commission, but rather was for the California Department of Alcohol and Beverage Control (ABC) to decide.

Notwithstanding, Commissioner Christiansen, at approximately the 1:44 point in the hearing, began her deliberation saying that the biggest issue she had with the application was the completeness of the plans regarding the kitchen. She stated the kitchen plans seemed unfinished. She noted that she supports the applicant’s proposal for alcohol, saying it would be a great use, and also noted that she had no problem with the amount of seating proposed. However she stated that the kitchen plan needed to be fleshed out and seemed haphazard and that she didn’t have a good understanding of what food the applicant would be serving.

While the applicant greatly appreciates Commissioner Christiansen's support of the proposed business model of 26 seats and beer and wine service, applicant respectfully states that Commissioner Christiansen's denial of the project was based exclusively, according to her own words, on the kitchen plans and assessment of the bona fides of the meals, which were not part of the findings to be made. Therefore to rely on that as the reason for denial, especially in light of the expressed support for all other aspects of the project, was error.

Commissioner Routh next spoke. He began by saying that the food aspect of the restaurant was nebulous and left the Commission without direction in that regard. Therefore his denial also relied on an aspect of the project that was not properly a finding to be made by the Commission.

2. Staff and Commissioners improperly narrowed the parking consideration.

Commissioner Routh also noted that the intensification of the use would attract more people to the Village and create a parking problem. Commissioner Westman stated that approving this CUP might cause other businesses to try to expand when they cannot due to the parking requirement. And, as stated above, the Staff report focused almost exclusively on the parking requirement as a reason for denial.

However, Applicant submits that the parking requirement was looked at through too narrow a lens by Staff and Commission.

Staff emphasized, in both the Staff Report and the Presentation, that in looking at the requirement for consistency with the City's Local Coastal Program (LCP), Land Use Plan and CDP findings, **Policy 1-1 of the Land Use Plan** states:

"It shall be the policy of the City of Capitola to maintain and enhance access to Capitola Beach, Village, and Wharf while maintaining and enhancing the existing character of Capitola Village and the surrounding residential areas. **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.**" (emphasis added.)

Applicant and the many supporters who spoke at the Planning Commission noted that the parking issue was not limited, in Capitola's own guiding documents, to new parking spots, but also contemplated "other alternative transportation systems, such as a shuttle bus and remote parking." Applicant and the speakers also emphasized public transportation, ride share services, and green transportation options, such as bicycles, electric bikes and foot traffic as the "alternative transportation systems" by which new development could be evaluated. Applicant and the speakers also noted that 401 Capitola is very near the two large public parking lots, which should be considered as "availability of parking."

Unfortunately it appeared that both Staff and Commission rejected all these alternatives and only concentrated on new-built parking spots as satisfying the parking requirement.

Applicant suggests this is error, and notes that, especially in this time, alternatives to cars are growing in importance and governmental emphasis in this state and country, and thus Applicant urges this Council to value these alternatives as intended by Land Use Plan Policy 1-1 itself.

3. Findings for a Variance can be Made

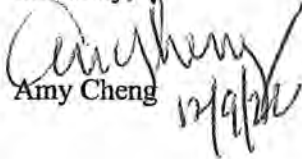
Government Code Section 65906 states that variances can be granted, not as a special privilege but when the property's conditions, including size, shape, topography etc., pose a hardship on the subject property that other such businesses don't have.

Government Code Section 65906.5 holds that parking requirements of a local zoning ordinance may be relaxed by variance to allow some parking spaces to be located off-site or to allow payment of in lieu fees or facilities. The variance must be an incentive to and a benefit for the non-residential development. Note that, according to the law, the benefit only has to be for the non-residential development at issue.

In 2014 or 2015 this business was built as a retail store and received a variance of the required 4 parking spaces due to the hardship posed by this business' conditions. It is flanked by the trestle property and the fire department – there is no ability to build on-site parking.

That circumstance is unchanged today. It is no less true that this property is unable to build on-site parking. Therefore if the reason for the variance was valid under the first CUP for this property, it is no less valid under the current proposal. The use is allowed. The City Council can make the required findings in this matter, and Applicant is respectfully requesting that Council make those findings.

Sincerely,


Amy Cheng



CITY OF CAPITOLA APPEAL INFORMATION

CITY OF CAPITOLA COMMUNITY DEVELOPMENT DEPARTMENT
420 CAPITOLA AVENUE, CAPITOLA, CA 95010
831-475-7300 WWW.CITYOFCAPITOLA.ORG

CITY OF CAPITOLA
CITY CLERK

DEC 9 2022

Appeals Overview

The City of Capitola appeals process enables applicants and other affected parties to challenge a City decision by having the matter considered by a higher level decision making authority.

Who May Appeal

Any Capitola resident may file a permit appeal. Non-residents may file an appeal if they can demonstrate that they have a significant interest in the matter.

Appeal Deadlines

An appeals must be filed by 5:00 PM within 10 calendar days of a permit decision unless a longer appeal period is specified. Appeals filed after the deadline will not be accepted or considered. Postmarks are not accepted.

Appeal Requirements

Individuals wishing to file an appeal must submit a completed appeal application and pay applicable fees. Applicants who file an appeal and have a developer deposit account will also be charged for staff time to process the appeal.

Types of Appeals

1. **Administrative (Staff Determinations):** Appeals of administrative staff determinations are cases which do not involve a discretionary permit, such as a conditional use permit, design permit, or a subdivision map. Administrative appeals are considered by the City Council.
2. **Permit Decisions:** Appeals of permit decisions involve decisions issued by the Community Development Director or the Planning Commission. Director decisions are considered by the Planning Commission. The City Council considers appeals of Planning Commission decisions.
3. **Code Enforcement Actions:** Individuals cited with a code enforcement action may appeal the City's determination. Depending on the nature of the code enforcement action, the appeal may be considered by the Planning Commission or an appeal officer.
4. **Building Code Interpretations:** A property owner, applicant, or contractor may appeal an interpretation made by the Building Official to the Building Appeals Board.
5. **Coastal Appeals:** A decision by the City Council to approve a Coastal Development Permit may be appealed to the Coastal Commission if the project is located in the Coastal Appeal Zone.

Appeal Fees

All appeal applications must be accompanied by a non-refundable appeal fee as established by the City's adopted Fee Schedule.

Appeal Hearing

All appeals are considered at a public hearing before the applicable decision making body.



**CITY OF CAPITOLA
APPEAL APPLICATION FORM**

CITY OF CAPITOLA
CITY CLERK

DEC 9 2022

TYPE OF APPEAL (check one)

- Administrative - Staff Determination
- Planning Commission Decision
- Code Enforcement Action
- Building Code Interpretation
- Coastal Appeal

APPEAL FEE

See Fee Schedule
See Fee Schedule
See Fee Schedule
See Fee Schedule
\$0

APPELLANT INFORMATION

Name: Amy Cheng
Address: 401 Capitola Ave. City Capitola Zip 95010
Phone: 510-701-8383
Email: 1BIZNFUN@gmail.com

APPEAL INFORMATION

Project Address: 401 Capitola Ave. Capitola CA 95010
Property Owner: Amy Cheng
Application Number: 22-0282

REASONS FOR APPEAL

Please note the reasons and grounds for your appeal. Attach additional pages as necessary.

See additional sheets.



CITY OF CAPITOLA
CITY CLERK

DEC 9 2022

City of Capitola MASTER APPLICATION

Application #	_____
Filing Date	_____
Total Fee	_____
Received by	_____

Project Address: 401 Capitola Ave., Capitola, CA 95010

A.P.N.: 035-131-11

Zone District: MU-N

Existing Condition/Current Use Take-out Food and Beverage Establishment CMC 17.160.020(c)

New Addition Remodel Variance Demo CUP Coastal Permit Other _____

Residential: # of Bldgs. _____ # of Stories _____ # of Units _____ Commercial: # of Bldgs. _____ # of Stories _____

Project Description:

Appeal to the City Council of Planning Commission's denial of Application #22-0282 on December 1, 2022

Proposed Use/Occupancy: _____

IMPORTANT: Please check the box next to the name of the person listed below whom we should contact regarding this application.

Property Owner: Amy Cheng Phone: 510-701-8383

Mailing Address: 401 Capitola Ave., Capitola, CA 95010

Email: 1BIZNFUN@gmail.com

Applicant: Amy Cheng Phone: 510-701-8383

Mailing Address: 401 Capitola Ave., Capitola, CA 95010

Email: 1BIZNFUN@gmail.com

Architect/Designer: Richard Emigh Phone: 831-566-9142

Mailing Address: _____

Email: Redesigns02@yahoo.com

Engineer: Consultant Lynne Lampros Phone: 408-605-7864

Mailing Address: _____

Email: lynnepros@gmail.com



City of Capitola MASTER APPLICATION

Application # 22-0282

Proposed

New Commercial Building: _____ sq. ft.
New Residential Building: _____ sq. ft.
Addition: _____ sq. ft.
Remodel/Tenant Improvement: _____ sq. ft.
Carport/Patio Cover: _____ sq. ft.
New Deck: _____ sq. ft.
New Fencing: _____ sq. ft.
New Paving: _____ sq. ft.
Parking Spaces: _____
Other (specify): _____

Existing

Lot: _____ x _____ = _____ sq. ft.
Main Building: _____ sq. ft.
Parking Spaces: _____
Other (specify): _____ sq. ft.

PLANNING STAFF USE ONLY

- ARCHITECTURAL AND SITE REVIEW
- COASTAL REVIEW: EXCLUSION, EXEMPTION OR REC. TO CCC
- ENVIRONMENTAL REVIEW
- ADMINISTRATIVE REVIEW
- PLANNING COMMISSION REVIEW (PC)
- ZONING ADMINISTRATOR
- OTHER _____

I, the undersigned, understand approval of this project does not waive any requirements, laws, or ordinances of the City of Capitola. All statements contained herein, including all documents and plans submitted in connection with this application, are true and accurate to the best of my knowledge.

In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorneys' fees and litigation costs, arising out of or in any way related to the City of Capitola's processing, consideration, or approval of this Application.

Signature: _____
Angie Cherry
Property Owner

Date: _____
12/9/22

I hereby authorize the above named contact person to act as my agent in all matters pertaining to this application.

Signature: _____
Angie Cherry
Applicant

Date: _____
12/9/22

AGREEMENT FOR PAYMENT OF PROCESSING FEES

City of Capitola (hereinafter CITY) and Amy Cheng (hereinafter APPLICANT) agree to the following:

1. This Agreement is in reference to the permit processing costs associated with Planning Application # 22-0282.
2. A minimum deposit or fixed fee will be collected at the time of project submittal. Fixed fees are non-refundable, flat fee payments. Deposit accounts require an initial payment as stipulated in the City's Fee Schedule. If the initial deposit is depleted, the APPLICANT is responsible for replenishing the account to continue processing. Projects with deposit accounts will receive an invoice prior to issuance of a planning permit to be paid within 25 days from the invoice date. Upon completion of project review, any remaining deposit will be refunded to the APPLICANT. If it is necessary to utilize consultant services, a deposit to cover the consultant's costs will be requested from the APPLICANT prior to execution of the contract with the consultant.
3. The APPLICANT is responsible for payment of all permit processing costs associated with this project. If during the course of processing, the financial responsibility changes, the new financially responsible party must complete an Agreement for Payment which will release the previous APPLICANT from further financial obligations and designate the new APPLICANT.
4. If an invoice is not paid within 25 days CITY may stop work and close the application.
5. APPLICANT agrees to pay all fees applicable under the City's Fee Schedule prior to approval and issuance of land use clearance, map clearance or clearance for record of survey, building permit and post discretionary case clearance. No clearances or permits will be issued without receipt of fully payment for fees unless waived or adjusted by the Community Development Director upon a showing of good cause.
6. If the APPLICANT owes any amount due on any other project application, the CITY will not accept any subsequent permit application from the APPLICANT, unless waived by the Community Development Director.

Executed this 9 day of December, 2022

CITY

Community Development Department

APPLICANT

Amy Cheng
Signature

Print Name

Amy Cheng

Mailing Address

401 Capitola Ave
Capitola, CA 95010

CASHIER'S CHECK

0047809893

0000478 11-24
Office AU # 1210(8)

Remitter: AMY CHENG
Operator I.D.: u857414 u815813

December 7, 2022

PAY TO THE ORDER OF ***CITY OF CAPITOLA***

**Three Thousand Five Hundred and 00/100 -US Dollars **

\$3,500.00

Payee Address:
Memo: COST RECOVERY DEPOSIT

VOID IF OVER US \$ 3,500.00

WELLS FARGO BANK, N.A.
10260 S DE ANZA BLVD
CUPERTINO, CA 95014
FOR INQUIRIES CALL (480) 394-3122

Munira Khan
CONTROLLER

⑈0047809893⑈ ⑆121000248⑆4861 511475⑈