

# Capitola City Council

## Agenda Report



**Meeting:** March 23, 2023

**From:** Community Development

**Subject:** 401 Capitola Avenue Appeal

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**Recommended Action:** Adopt a resolution affirming the Planning Commission's decision to deny Application #22-0282 seeking a Conditional Use Permit, Parking Variance, and Coastal Development Permit for a restaurant/café at 401 Capitola Avenue (Capitola Tap House).

**Background:** On June 5, 2014, the Planning Commission approved a Design Permit, Setback and Parking Variances, Coastal Development Permit (CDP), and Sign Permit to Charlie and Company to construct the building at 401 Capitola Avenue. The parking variance was granted for all four required onsite spaces and the property has operated with no onsite parking ever since. The property was subsequently sold by Charlie and Company to the current applicant.

On April 4, 2019, the Planning Commission approved Conditional Use Permit (CUP) #19-0031 for a takeout restaurant to serve boba tea, rice bowls, salads, beverages, and ice desserts with a six-seat maximum. The final local action notice included 26 conditions of approval that remain in effect (Attachment 3). The Planning Commission did not approve a proposed patio along the side of the building nearest the trestle and conditioned the permit to require that any kitchen exhaust be located on the front half of the building toward Capitola Avenue. A parking variance was not required for this change of use because the required parking for a six-seat takeout business is the same as the required parking for a retail use, and a six-seat takeout business is not considered an intensification of the retail use.

During building permit review, the applicant modified the business plan to be a kombucha, tea, and coffee serving takeout establishment with a smaller kitchen that is primarily for washing dishes and has no cooking equipment or food preparation counters. The change included replacing a portion of the kitchen and prep area with a walk-in cooler that is plumbed with 32 tap dispensers for non-alcoholic beverages. The Santa Cruz County Environmental Health Department has conditioned the approval of the current facility to limit food services to cold brew coffee and kombucha from approved sources only.

On May 18, 2022, the Building Department issued a Certificate of Occupancy for the Capitola Tap House. The Capitola Tap House is operating currently with a condition of approval that limits the use to six or fewer seats. The daily configuration includes no seats but has two bar height tables on the front porch that customers use while standing.

On July 6, 2022, the applicant filed Application #22-0282 for a new CUP, Parking Variance, and CDP, to establish a restaurant with 26 seats that serves beer from the tap system and has no onsite parking.

On December 1, 2022, the Planning Commission considered Application #22-0282 and denied the application 3-0, with two Commissioners recusing. The Commissioners cited an inability to make findings to support the CUP, CDP, and Parking Variance as the basis for denial (Attachment 12).

On December 9, 2022, the applicant appealed the Planning Commission's denial.

**Overview of Application #22-0282:** The appellant applied for Planning Commission review of a Conditional Use Permit (CUP) to change the property from a six-seat takeout business, serving kombucha and cold coffee, to a restaurant serving beer and wine. The proposal seeks to expand customer seating from six seats to 26 seats and seeks a variance for seven required parking spaces.

The proposed intensified use requires seven (rather than the currently required four) parking spaces, in accordance with Capitola Municipal Code Section 17.76.020.

**Capitola Municipal Code Section 17.76.020 B. Replacing Existing Uses.**

b. In all other changes of use in the mixed use village (MU-V) zoning district, additional parking is required to accommodate the incremental intensification of the new use. Additional parking is not required to remedy parking deficiencies existing prior to the change in use.

The applicant seeks a variance (essentially a waiver) of the seven-space parking requirement.

The existing kombucha and cold coffee business at Capitola Tap House is operating under an existing CUP (#19-0031) as a takeout establishment and the location provides no onsite parking. Under the City's zoning code as applicable when the current use was approved, a takeout restaurant with six seats or less has to provide the same parking as retail uses. A takeout restaurant with seven or more seats has to provide roughly twice as many parking spaces, consistent with restaurant parking requirements.

The existing business has installed 32 taps that connect to a walk-in cooler and currently uses the taps to serve kombucha and cold coffee to customers for onsite consumption and to-go sales. The current application seeks to convert 50% of the existing tap system to use for beer/wine/hard kombucha, and to continue using the other 50% of the taps as they are currently used. The proposal also includes conversion of interior space to add a food prep counter, toaster, and ice machine.

On December 1, 2022, the Planning Commission denied the application with a 3-0 vote, with two Commissioners recusing. The Commissioners cited an inability to make findings to support the proposal as the basis for denial.

Basis of Appeal Filed December 1, 2022: The basis of the appeal (Attachment 8) provided by the applicant focused on three issues:

1. "The staff report noted the use is allowable but the focus for denial was on parking." The appellant states concern with the staff determination that by providing no parking onsite, there would be spill over parking impacts to street parking in the vicinity and impacts to beach access by limiting parking for visitors.

Staff Analysis: Zoning Ordinance Section 17.76.020 B(b) requires parking for an intensification of use to be provided on-site. The applicant is proposing an intensification of use and the proposal does not include onsite parking which would have spill-over parking impacts.

2. "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 appellant states that two Commissioners were critical of the proposed kitchen and that was the basis of their denial vote.

Staff Analysis: Planning Commissioners discussed the shortcomings of the application, including the proposed kitchen and business plan. The Commissioners also discussed comparisons made to The Avenue Café being difficult due to The Avenue Café having been established over 40 years ago, three General Plans ago, and under a completely different set of land use laws and standards. The Commissioners described an inability to make findings for the requested CUP, CDP, and Parking Variance, stating that the project would set a precedent of allowing an intensification of use without parking.

While the Commission may have discussed multiple aspects of the project, their denial was based on a lack of ability to make the findings for a CUP, Parking Variance, and CDP. The denial did not include reference to the kitchen or business plan.

3. "Findings for a Variance can be Made." The appellant states that the Planning Commission approved a Parking Variance for the subject property in 2014 and made findings for approval.

They also state that property conditions have not changed, so the proposed Parking Variance should also be approved.

Staff Analysis: The Planning Commission approved a Parking Variance in 2014 for four required parking spaces to allow new construction on the property to operate as a retail use. In 2019, the Planning Commission approved a conversion of the business from retail (Charlie & Co.) to a takeout business (Capitola Tap House). In 2019, the City's Zoning Ordinance allowed for conversion from retail to a takeout eating and drinking establishment use where seating was limited to a six-seat maximum. The City's Zoning Ordinance specifically allows property owners and commercial tenants the flexibility to convert from retail to takeout (and vice versa) without necessitating parking upgrades, provided the takeout establishment has six or fewer seats. A takeout restaurant is limited to six seats. The proposed restaurant had more than six seats and is no longer a takeout restaurant. Restaurants and cafes have a parking requirement of one parking space for dining and drinking areas and one parking space for every 300 square feet of other floor area.

In the applicant's 2019 application to originally establish the Capitola Tap House, the seating for the takeout business was limited to six seats, which did not intensify the parking demand when compared to the prior retail business. The existing 2014 parking variance was sufficient to allow the conversion to a six seat takeout business use in 2019.

The current application seeks to change the use from a takeout business with six seats to a restaurant with 26 seats and is an intensification of use that requires seven onsite parking spaces. 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 requirements for seven spaces.

Staff Supported Options: Following denial of the project, the applicant requested that City staff provide feedback on the type of proposal that could be supported. Planning staff discussed the following options with the applicant:

- A. No Change to Existing Takeout Food and Beverage: Maintain existing use a takeout food and beverage establishment with six seat limit and no alcohol. No new permit required.
- B. Takeout Food and Beverage with Beer and Wine: The business could sell food, beverages, and retail items, but not use taps for beer and wine. The business could sell beer and wine that is bottled or canned off site and displayed for sale in a small display refrigerator. This option would retain the existing six seats. Prefilling containers from the tap system with beer and wine for sale in a display refrigerator would not be allowed.
- C. Retail with Tap Use: The business could operate as a retail-only store that fills containers from the tap system onsite for offsite consumption only. No tasting, onsite consumption, or patron seating would be permitted.

The common limitation of the three staff supported options is use of the 32-tap system, in part or in whole, for the service of beer and wine for onsite consumption. The takeout business has a lower parking requirement, is not an intensification of use, and does not have spillover impacts. However, a tap system with beer and wine is inherently incompatible with a takeout business model due to open container laws. Tap systems are typical of bars, lounges, beer gardens, and full-service restaurants that cater to customers that intend to stay in the business for longer periods of time. The Zoning Ordinance defines and regulates takeout businesses differently than restaurants, bars, and lounges (Section 17.160.020 E 1 a, b, & c).

Modification of Appeal: An appeal to the City Council is a "de novo" review per Section 17.152.30 (F). This means the City Council can consider any alternatives in addition to the project that was reviewed by the Planning Commission. The appellant has provided a second letter introducing several new alternatives for consideration (Attachment 9). Appellant proposed the following alternatives:

1. Remove the parking variance request, maintain six seats, and convert 50% of the existing 32 taps to beer/wine/hard kombucha.

Staff Analysis: This alternative is most accurately characterized as a bar or lounge as defined by the Zoning Ordinance. The definition of a bar or lounge is “a business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is incidental”. A bar or lounge is an intensification of use which requires additional parking; therefore, removal of the parking variance is not an option. The Zoning Ordinance defines and regulates bars and lounges separately from a takeout business as those uses have different business patterns, scale, and impacts. A defining feature of a bar, lounge or beer garden is often a tap system.

2. Remove the Parking Variance request, maintain six seats and propose to sell containers prefilled by the tap system with beer/wine/hard kombucha and cold coffee/kombucha from a refrigerator. On site consumption would be limited to flight sized pours if regular sized pours are not acceptable to the City Council (limited to two per customer).

Staff Analysis: This alternative proposes to function similar to a tasting room, with stated intent to limit pours for sampling. This would be extremely challenging for City Planning staff and Police to enforce. ABC allows bona-fide breweries and vineyards to have a limited number of satellite tasting rooms. The Capitola Tap Room would not classify as a tasting room as it is not affiliated with a vineyard or brewery. This alternative would also be categorized as a bar or lounge and would require a variance for additional parking due to the intensification of use. As previously mentioned, allowing a takeout establishment to have a tap system is not compatible with the function of a takeout business model.

3. Remove the Parking Variance, maintain six seats, and sell containers prefilled by the tap system with beer/wine/hard kombucha from a refrigerator for consumption onsite.

Staff Analysis: The chain of custody for an individually prefilled beer/wine/hard kombucha that is filled and then placed in a refrigerator for retail sale and consumption onsite is inconsequential. In situations when this transaction is completed in a matter of seconds, the business would be effectively functioning as a bar, beer garden or pour room. For this reason, staff continues to view this proposal as requiring a parking variance and be a bar or restaurant for zoning purposes.

The appeal modification letter introduces the concept of leasing a portion of the RTC property next to the trestle to add three parking spaces. The applicant did not provide a plan showing how the three parking spaces would be laid out. The RTC/trestle property is zoned CF (Community Facility). The Zoning Ordinance land use table for the CF zone (Table 17.32.1) does not list parking lots or parking facilities as permitted or conditional uses, so this option is not currently allowed by ordinance. The City is aware that there are several long-standing agreements for parking under the trestle. These uses are considered legal nonconforming and were established under prior standards.

Planning staff used existing maps and measured the likely area between the existing building and the trestle and found a width of approximately 18 feet. The minimum commercial parking space dimensions are 9 feet wide by 18 feet deep; therefore, a maximum of two spaces could be accommodated dimensionally by width. However, accessible parking spaces are prioritized and require additional area for paths of travel and clearances. This concept would also require removal of a guy wire, communications pole, undergrounding of communications cables, and coordination around a storm drain inlet. This concept would potentially provide one accessible parking space but, does not meet the requirement of seven total parking spaces.

The appellant also requests that if the City Council chooses to uphold the Planning Commission’s denial of the application that it be without prejudice so that the applicant can continue working with staff on an alternative. Pursuant to Section 17.156.090(A), the City may not accept an application for the same or substantially similar permit for the same site, for twelve months following the denial, unless the denial is made without prejudice. Planning staff believes that any of the three options provided by staff to the applicant would not be substantially similar to the current application.

CEQA: The City Council's action would be statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 ("Projects Which are Disapproved"). If the Council wishes to grant the appeal, or approve the project with modifications, this determination should be modified.

Fiscal Impact: None.

Attachments:

(Attachments 1-5 included from the December 1, 2022, Planning Commission staff report)

1. Proposed Site Plan/Floor Plan
2. Proposed Business Plan and Narrative
3. Existing CUP Conditions for #19-0031
4. Applicant's letter to the Planning Commission
5. Public Comments
6. Revised Floor Plan - February 22, 2023
7. Revised Business Plan - February 23, 2023
8. Appeal and Basis Statement submitted December 9, 2023
9. Modification of Appeal submitted February 23, 2023
10. Planning Commission Meeting Minutes - December 1, 2022
11. Resolution Affirming Denial
12. December 1, 2022, Planning Commission staff report

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