

Capitola Planning Commission

Agenda Report



Meeting: October 6, 2022

From: Community Development

Address: 401 Capitola Avenue

Permit Number: #22-0282

APN: 035-131-11

Conditional Use Permit and Parking Variance to establish a bar and lounge (pour room) serving beer and wine with no onsite parking in the MU-N (Mixed Use Neighborhood) zoning district. This project is in the Coastal Zone but does not require a Coastal Development Permit.

Environmental Determination: Categorical Exemption 15301

Property Owner: Amy Cheng

Representative: Richard Emigh Filed: 07.06.2022

Applicant Proposal

The applicant is applying for an amendment to an existing conditional use permit (CUP) #19-0031 to establish a bar and lounge (pour room) serving beer and wine, to expand indoor and outdoor dining/consumption customer areas and a variance to required parking. The existing business, Capitola Tap House, is operating under the existing CUP as a take-out food and beverage eating establishment that serves kombucha, coffee, tea, and snacks. Conditions of the 2019 CUP limit the business to six customer seats and the location provides no onsite parking.

Background

On April 4, 2019, the Planning Commission approved CUP #19-0031 for a takeout restaurant that was to serve rice bowls, salads, beverages, and ice desserts with six seats for customers. The final local action notice included 26 conditions of approval that remain effective (attachment #3). During discussion, the Planning Commission decided not to approve a proposed patio along the side of the building nearest the trestle and that any kitchen/hood exhaust would need to be located on the front half of the building toward Capitola Avenue.

During the Building Permit plan check, the applicant changed the business model to a kombucha, tea, and coffee serving business with a smaller kitchen to serve small bites and snacks. 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.

Discussion

The Capitola Tap House is located at 401 Capitola Avenue, within the Mixed-Use Neighborhood (MU-N) zoning district and just outside the Mixed-Use Village (MU-V) boundary, which is aligned with the trestle. The purpose of the zones are different with the MU-V supporting a mix of retail, restaurants, services, and recreation amenities providing a walkable environment, catering to all ages, and supporting year-round activities during the day and night. Although also mixed-use, the purpose of the MU-N is to allow for neighborhood-serving mixed uses that enhance resident's quality of life and is carefully designed to complement its surroundings and minimize impacts on neighboring properties.

The 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 (use table 17.20-1).
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.

The existing business was approved under the prior Zoning Ordinance, which allowed takeout businesses to establish with six customer seats without requiring additional parking. The current Zoning Ordinance modified the standards for take-out food and beverage eating establishment to remove the six seat limit and rather limit customer accessible area to 160 square feet. More recent projects reviewed under the new code are required to renovate interiors to physically limit customer spaces to comply with the new standard. An example of a take-out food and beverage which complies with the new ordinance is Boba Tea located at 110 Capitola Avenue and was approved in October 2021.

The customer area of the existing building (interior plus front porch) is 554 square feet, which is considered legal nonconforming but the limitation to six seats still applies. The applicant proposes to activate the full 554 square foot customer space for customers to include 31 seats.

The Zoning Ordinance defines “Eating and drinking establishments” as follows:

17.160.020 E “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 proposed use includes greater than 160 square feet of customer area, includes 31 seats, proposes a self-pour tap system, and will utilize at least 50% of the 32-tap system for dispensation of alcoholic beverages. The proposed use is a “Bar and lounge” (pour room) as defined by the Zoning Ordinance.

The applicant has provided a business plan and narrative (attachment #2), which describes the intended operation details and customers for the business. The proposal includes operation hours of 11am-8pm and posits that most customers would be pass-by stops by visitors that are already on their way to and from the Village and beach.

Conditional Use Permit

The applicant's request is for approval of an amendment to CUP #19-0031 to allow beer and wine sales. The applicant has filed for a type 41 license with California Department of Alcohol and Beverage Control (ABC).

In review of the applicant's proposal, Planning staff consulted with the Police Department and found that no calls to Police have been made by or to the Capitola Tap House.

The Planning Department has conducted two Code Enforcement actions against the property since the existing CUP was approved in April 2019. In November 2019, the applicant built a trash enclosure that did not conform to the approved plans and had installed forms to pour concrete for a patio area that was specifically not approved by the Planning Commission. Planning staff visited the property, took photos, and informed the applicant of the violations. The applicant removed the forms and rebuilt the approved trash enclosure. In June 2022, the applicant had installed multiple banners in front of the business without permits. Planning staff visited the property and sent a courtesy notice to the applicant informing of the issue. The applicant removed the banners. There are no open code violations at the property.

Planning staff also contacted representatives from ABC and inquired about the proposal. The response was that ABC will not perform an in-depth review until after local approval but offered preliminary feedback. The representative noted that they were familiar with the front porch area and were not concerned with this area being used for consumption. The representative expressed concern with how IDs would be checked for a self-pour business model. They also noted that a type 41 license requires that the business be primarily food serving with beer and wine as a beverage option. They stated concern with the kitchen's limitations and the ability to meet the type 41 requirement of being a true restaurant.

Pursuant to 17.124.060, when evaluating a CUP, the Planning Commission must consider the following characteristics of the proposed use:

- A. Operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts).
- B. Availability of adequate public services and infrastructure.
- C. Potential impacts to the natural environment.
- D. Physical suitability of the subject site for the proposed use in terms of design, location, operating characteristics, shape, size, topography.

Pursuant to 17.124.070, the Planning Commission must make the following findings for approval for a CUP:

- A. The proposed use is allowed in the applicable zoning district.
- 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.
- 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.
- D. The proposed use will not be detrimental to the public health, safety, and welfare.

- E. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.

Planning Department staff cannot make the required findings for approval of the proposed CUP amendment. The operating characteristics of a bar and lounge business with no parking in the MU-N zone is not compatible with surroundings at this location. Additionally, the applicant has a recent history of code violations and ABC has open concerns that may not be able to be addressed with the current plan.

Parking Variance

Bar and Lounges require parking to be provided at a ratio of 1:60 square feet for customer area and 1:240 square feet for other areas. The gross calculation for the proposed business is 12 parking spaces (see table). However, section 17.76.020 only requires parking be provided for the incremental intensification of a proposed new use. The existing use, takeout restaurant, is categorized by code with a requirement for a 1:300 square foot parking ratio (1,265/300=4). Therefore, the existing parking credit for a 1,265 square foot building with a 1:300 ratio is four parking spaces. The proposed change of use has an incremental intensification that requires eight parking spaces be added to the site to comply.

Use Areas and Parking Required			
	Building Area	Customer Area	Other Area
First Floor	912 sf	404 sf	508 sf
Loft	203 sf	0 sf	203 sf
Porch	150 sf	150 sf	0 sf
Total	1,265 sf	554 sf	711
Parking Ratio		1:60 sf	1:240 sf
Required Parking		9 spaces	3 spaces
Provided Parking		0 spaces	0 spaces

General Plan Analysis

Several General Plan policies are relevant to the review of the project. Compatibility related to the intensity of the proposed use, no onsite parking, proximity to R-1 properties, and the location within the city are individually significant issues that are not mitigated and collectively result in an unsupportable project.

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

Policy 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.

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

In summary, the zoning code is established to implement the general plan and to protect the public health, safety, and welfare. The proposed project does not conform with the purpose statement of the MU-N zoning district and is contrary to the general plan.

CEQA

The project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations. The proposed project involves changes to operations and amending a conditional use permit to an existing mixed-use space.

Recommendation

Staff recommends that the Planning Commission deny the Parking Variance and the amendment to the Conditional Use Permit based on the following Findings.

Attachments

1. Proposed Site Plan/Floor Plan
2. Proposed Business Plan and Narrative
3. Existing Cup Conditions for #19-0031

Conditional Use Permit Findings

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

Bar and lounge businesses are permitted through a conditional use permit in the MU-V zoning district. The CUP amendment request for a bar and lounge is not consistent with the MU-N zoning or the General Plan policies applicable to this location. The business provides no parking onsite and proposes an expansion of 25 seats with implementation of a 32 tap system for beer and wine. The tap system is likely the largest in Capitola with a capability of dispensing large quantities of alcoholic beverages at a location that is transitional in land use intensity and prioritizes resident's quality of life.

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. Specifically, General Plan policies LU-1.3, LU-4.1, and LU-4.7; and Zoning Ordinance sections 17.20.010 B2, 17.124.060, and 17.128.010. 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.

A Variance for the additional eight parking spaces while providing zero onsite parking is not compatible with surrounding land uses. The applicant is proposing to place the burden of all inbound parking demand off site. This will have a direct impact on public parking options in the area with no mitigating circumstances. **This finding cannot be made.**

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

Bar and lounge uses, with 32 taps and limited space for patrons, poses a risk to public health, safety, and welfare to adjacent residential property owners. **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 proposed use is not adequately served by parking and places the burden of parking demand entirely offsite. The proposed use is not properly located within the city. With a

single family residence approximately five feet away and over twenty single family properties within 300 feet, the use will have an impact to quality of life for residents. Additionally, the proposed use will be a pour room with 32 taps with at least 50% dedicated to serving beer and wine. 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.**

F. This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is subject to Section 753.5 of Title 14 of the California Code of Regulations.

Section 15301 of the CEQA Guidelines exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving 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.

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.

There are not unique circumstance applicable to the subject property. The applicant is proposing a variance to allow no parking without making a justification that is based on inherent property or location conditions. **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 concludes that the subject property is currently operating with a legal nonconforming status 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. **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 an essential property right possessed by other property in the vicinity. The applicant has proposed an intensity of use that outsizes the property. Specifically, the property is 1,655 square feet and the proposed use requires 12 parking spaces. Commercial parking spaces are 9 feet by 18 feet and require 162 square feet of area. The required parking for the proposed use would require 1,944 square feet, which is larger than the subject property. **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 a detrimental to public health, safety, or welfare. It would be injurious to properties in the vicinity because all parking demand for the subject property would be borne by and adjacent to surrounding properties. Noise associated with a

pour room would have negative impacts on neighbors 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 a use that requires eight parking spaces to provide none. **This finding cannot be made.**

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

The variance would potentially have a minor impact 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.**

Report prepared by: Brian Froelich