

# Capitola Planning Commission

## Agenda Report



**Meeting:** July 21, 2022

**From:** Community Development

**Address:** 201 Monterey Avenue #C

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**Permit Number:** #22-0125

**APN:** 035-185-06

Conditional Use Permit Amendment and Design Permit to allow beer and wine sales, sidewalk dining, and outdoor dining to an existing restaurant (Castagnola Deli & Cafe) located in the MU-V (Mixed Use Village) zoning district.

This project is in the Coastal Zone and requires a Coastal Development Permit.

Environmental Determination: Categorical Exemption 15301

Property Owner: Atlantis Properties

Representative: Daniel Castagnola Filed: 3.21.22

### **Applicant Proposal**

The applicant submitted a request for an amendment to an existing Conditional Use Permit (CUP) #07-048 to allow beer and wine sales and outdoor dining within the private property on the side of the building. The applicant is also requesting a Design Permit to add sidewalk dining within the public right-of-way. Castagnola Deli & Cafe is located within the Mixed-Use Village (MU-V) zoning district at 201 Monterey Avenue #C. The proposed use is consistent with the General Plan, and Zoning Ordinance with the amendment of the Conditional Use Permit and recommended conditions.

### **Background**

On September 6, 2007, the Planning Commission approved CUP #07-018 for a take-out deli to expand an existing deli into the adjacent tenant space within the building. The combination of these two units is now what comprises Castagnola Deli & Café. The final local action notice included seven conditions of approval that remain effective and are included for reference as Attachment 1 (Existing Conditions of Approval).

The applicant received a Covid-19 Temporary Use Agreement approval by city staff to use a portion of the public sidewalk along the frontage and the private property on the side patio as a Covid-19 relief measure. The agreement will expire on September 15, 2022. The current proposal is to permanently incorporate the two outdoor dining spaces for use by the business and add beer and wine service.

### **Discussion**

The application requires a design permit and coastal development permit for the sidewalk dining and an amendment to the existing CUP for the onsite outdoor dining and sale of beer and wine.

### Sidewalk Dining

A portion of the outdoor dining is located within the public sidewalk and is subject to the recently adopted and certified Outdoor Dining Ordinance 1050. Within the Outdoor Dining Ordinance, the

restaurant is subject to a Design Permit and Coastal Development Permit by the Planning Commission and compliance with the following development standards:

1. Location. Sidewalk dining may be permitted on Monterey Avenue, Capitola Avenue, and the Wharf. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
2. Sidewalk Width. Minimum 5 feet clearance within the sidewalk.
3. Dining Infrastructure. Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation may be included in the design but shall not exceed 36-inches in height.
4. Materials. The sidewalk dining deck area shall include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
5. Signs, one business identification sign and one menu sign each not greater than two square feet are permitted.
6. Utilities. All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
7. Trash and Maintenance. Sidewalk Dining shall be maintained in a clean and safe condition as determined by the City, including as follows:
  - a. All trash shall be picked up and properly disposed of.
  - b. All flower boxes and planters shall contain live, healthy vegetation.
  - c. All tables, chairs, equipment, and structures must be kept clean and operational.
8. Sound. Music and amplified sound are not allowed in an outdoor dining area.
9. Hours of Operation. Outdoor dining may occur between 7 a.m. and 10 p.m. seven days a week. The City may allow extended hours for street dining decks for special events and holidays.
10. Open for Use. The sidewalk dining must be open for use a minimum of five days per week, except in cases of inclement weather. Open for use means that the eating or drinking establishment must allow customers to use the outdoor dining areas when the establishment is open.
11. Good Standing. The applicant must be in good standing with no violations by the City or any other regulator or permitting agency over the past 24 months.

As conditioned, the proposed application complies with all the standards listed above. The applicant would like to retain the same furniture and configuration they utilized during the Covid-19 temporary permit. The sidewalk dining is proposed directly in front of the restaurant. The furniture includes three wrought iron tables, turquoise umbrellas, and eight wrought iron chairs. The wrought iron furniture is high-quality material that can withstand inclement weather. The applicant intends to replace the existing umbrellas with this permit. The new umbrellas will be high quality, include a UV rated material, and not include any logos or advertising per condition of approval #16. The layout complies with the required minimum sidewalk width of five feet but leaves no room for additional design infrastructure such as planters or stanchions and ropes between the tables and the sidewalk. Additionally, the table nearest the northern entry door can only accommodate two chairs parallel to the sidewalk in order to maintain proper clearance. No business signage is proposed in conjunction with the permit. Conditions of approval are included to ensure the requirements for utilities, trash and maintenance, sound, hours of operation, and quality materials are followed.

#### Amended Conditional Use Permit

The active CUP #07-018 for 201 Monterey Avenue Unit C combined two tenant spaces into the now existing 550 square foot Castagnola Deli & Café. Additionally, there were seven conditions of approval as follows:

1. The project approval consists of a Conditional Use Permit for a take- out deli to be located at 201- D Monterey Avenue.
2. There shall be no more than six seats provided.
3. No outdoor seating is permitted.
4. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission. Similarly, any significant change to the use itself, or the site, must be approved by the Planning Commission.
5. The application shall be reviewed by the Planning Commission upon evidence of non-compliance with conditions of approval or applicable municipal code provisions.
6. Business hours will be limited to 7: 30AM — 8:30PM.
7. The applicant shall obtain a business license prior to operating the business.

Business hours are limited to 7:30 AM to 8:30 PM within the active CUP. The new outdoor dining ordinance allows outdoor dining in the village from 7 am to 10 pm. To create consistency throughout the village, staff modified the existing condition to align with the allowed hours for outdoor dining.

The prior zoning code allowed take-out restaurants with the provision that the use be limited to six seats. This allowed a limited scope of service for restaurants to establish and operate without providing additional parking. The current zoning code does not include a six-seat limit. Rather, take-out food and beverage establishments are permitted to have food and beverages that may be consumed on the premises, taken out, or delivered, but limits the area open to customers can be no more than 160 square feet. The interior customer space is approximately 220 square feet and legal nonconforming. The limitation for six interior seats still applies to the property.

The applicant is requesting an amendment to the active CUP to allow onsite outdoor dining and onsite sale of beer and wine. For the onsite outdoor dining, the applicant is proposing to utilize the patio space on the north side of the building. This space is 88 square feet and can accommodate four tables. The space is currently landscaped with planters and potted plants.

Regarding parking, Section 17.76.020.C.1.B, allows an eating and drinking establishment to expand up to 20 percent of the existing floor area to allow new outdoor dining areas without providing additional parking. The current tenant space is 550 square feet. The applicant is proposing to add 88 square feet (less than 20 percent) of outdoor dining for the private patio. The limitation of a maximum of six seats inside the restaurant remains. In addition, the state waived outdoor dining parking requirements under AB 61, through July 1, 2024 when the law sunsets. AB 61 also requires local adoption of an outdoor dining ordinance to reduce or eliminate parking requirements for outdoor dining. Capitola has adopted a local ordinance that allows street dining decks and sidewalk dining in the public right of way for qualifying properties and does not require additional parking for these installations.

#### Conditional Use Permit

The applicant's other request is for approval of an amendment to CUP #07-048 to allow beer and wine sales. The applicant has filed for a type 41 license with California Department of Alcohol and Beverage Control (ABC). ABC has provided conditions of approval that are incorporated in the recommended conditions below.

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.

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 Castagnola Deli & Cafe and there is no major code violation history. Planning staff also contacted representatives from ABC and inquired about delineation requirements for boundaries of the proposed consumption areas. The response was that ABC now defers the design specifics of delineation to local authorities but would require delineation of the consumption area at the sidewalk. With this application, the area of proposed sidewalk dining is only wide enough for the proposed two-foot-wide tables and the required five feet wide sidewalk. There is no space to add separation planters or stanchions and rope. Planning staff shared photos of the sidewalk dining area with ABC and they agreed that the space was not large enough to be delineated and properly controlled. Further, restaurants in Capitola which serve alcohol adjacent to a public sidewalk have a well-defined space for consumption, such as Cork and Fork and Britannia Arms. To maintain delineation, staff added the following conditions of approval to not allow alcohol consumption within the sidewalk dining.

- 8. Beer and wine consumption shall be limited to inside the restaurant and the patio area. No beer and wine consumption shall be allowed within the sidewalk dining.
- 9. Signage shall be maintained at the entry/exit to the restaurant and patio stating that "consumption of alcohol prohibited in sidewalk dining".

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.

As conditioned, the findings for approval of the amended CUP can be made for the application.

### **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 minor changes to operations and amending a conditional use permit to an existing mixed-use space. No adverse environmental impacts were discovered during project review by either Planning Department Staff or the Planning Commission.

### **Recommendation**

Staff recommends the Planning Commission approve the Coastal Development Permit, Design Permit, and the amendment to the Conditional Use Permit based on the following amended

Conditions of Approval and updated Findings. Staff recommends not permitting the sidewalk dining area for beer and wine consumption due to the limited sidewalk clearance and ability to create clear delineation to manage the space.

#### **Attachments**

1. Existing CUP conditions of approval
2. Site Plan
3. ABC draft conditional license

#### **Amended Conditions of Approval from Permit #07-018**

1. ~~The project approval consists of a Conditional Use Permit for a take-out deli to be located at 201 D Monterey Avenue.~~ The project approval consists of a Coastal Development Permit and Design permit for sidewalk dining and an amendment to a Conditional Use Permit for the sale of wine and beer and outdoor dining in the side patio dining. The original CUP application #07-048 was approved on September 6, 2007, by the Planning Commission. The amendment to the CUP application #22-0125 was approved by Planning Commission on July 21, 2022.
2. There shall be no more than six seats provided inside the restaurant.
3. ~~No outdoor seating is permitted.~~ Outdoor dining is permitted in an eight foot by 11 foot space in the side patio located within 201 Monterey Avenue; and three, two foot by two foot bistro tables immediately adjacent to the building within the public sidewalk. The tables, chairs, and umbrellas shall not interfere with a required five-foot sidewalk clearance. The table nearest the north entrance shall be limited to two opposing chairs parallel to the sidewalk.
4. Any significant modifications to the size and appearance of the structure must be approved by the Planning Commission. Similarly, any significant change to the use itself, or site, must be approved by the Planning Commission.
5. The application shall be reviewed by the Planning Commission upon evidence of non-compliance with conditions of approval or applicable municipal code provisions.
6. ~~Business hours will be limited to 7:30AM—8:30PM.~~ Outdoor dining may occur between 7 a.m. and 10 p.m. seven days a week.
7. The applicant shall ~~obtain~~ maintain a current business license ~~prior~~ to operate the business.

#### **Additional Conditions of Approval for Conditional Use Permit**

8. Beer and wine consumption shall be limited to inside the restaurant and the patio area. No beer and wine consumption shall be allowed within the sidewalk dining.
9. Signage shall be maintained at the entry/exit to the restaurant and patio stating that “consumption of alcohol prohibited in sidewalk dining”.
10. No new lighting or signs are approved with this permit.
11. Amplified sound is prohibited outside the building.

### **Sidewalk Dining Conditions of Approval**

12. The Covid-19 temporary use permit for outdoor dining expires on September 15, 2022. To utilize the sidewalk dining after September 15, 2022, the applicant shall complete a revocable encroachment agreement, in a form provided by the Public Works Department, for all approved privately installed improvements within the street right-of-way.
13. Prior to use beyond September 15, 2022, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director. Upon evidence of non-compliance with conditions of approval or applicable municipal code provisions, the applicant shall remedy the non-compliance to the satisfaction of the Community Development Director or shall file an application for a permit amendment for Planning Commission consideration. Failure to remedy a non-compliance in a timely manner may result in permit revocation.
14. The sidewalk dining shall comply with all applicable requirements of Capitola Municipal Code Section 17.96, the Zoning Code, the revocable encroachment permit, and all other applicable laws, administrative policies, rules, and regulations.
15. The outdoor dining shall be consistent with the Local Coastal Program and not adversely impact coastal resources, coastal access, and coastal views.
16. **Materials and Furniture.** The sidewalk dining must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather. The application included black wrought iron tables and chairs, as well as two commercial grade umbrellas. The tables, chairs, and umbrellas approved within this permit must be well maintained. Any visible signs of weathering (fading, rust, holes, etc.) shall be addressed immediately through replacement or maintenance. Faded umbrellas shall be replaced with a UV rated fabric and not include logos, labels, or advertising. Upon Planning Commission approval, the property owner will order new umbrellas to replace the existing faded umbrellas.
17. **CDP Recertification Requirement.** All CDPs issued for outdoor dining permits shall require recertification by the City Council no later than three years after the CDP is issued, and every five years thereafter. Recertification shall require a public hearing before the City Council. City staff will initiate the recertification process by providing notice to the applicant of the hearing date, at least thirty (30) days in advance of the public hearing. For a CDP to be recertified, the City Council must find that the subject project is operating in compliance with the findings and conditions of the CDP and in compliance with the LCP. The City Council may recertify, modify, or revoke the CDP.
18. **Signs.** No new business signs are included in the application.
19. **Stormwater Drainage.** The sidewalk dining must allow for adequate stormwater drainage. Sidewalk dining areas shall not block the drainage flow along the gutter line. Sidewalk dining shall not block access into any drain inlet or other drainage/stormwater facility.
20. **Utilities.** The sidewalk dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
21. **Trash and Maintenance.** The outdoor dining shall be maintained in a clean and safe condition as determined by the City, including as follows:
  - a. All trash shall be picked up and properly disposed of.

- b. All flower boxes and planters shall contain live, healthy vegetation.
  - c. All tables, chairs, equipment, and structures must be kept clean and operational
22. Sound. Music and amplified sound are not allowed in an outdoor dining area.
23. Hours of Operation. Outdoor dining may occur between 7 a.m. and 10 p.m. seven days a week.
24. Open for Use. All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must have tables ready for customers to use the outdoor dining area when the establishment is open for business.
25. All street dining facilities may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.

### **Conditional Use Permit Findings**

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

Beer and wine sales are permitted through a conditional use permit in the MU-V 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.**

The restaurant space with beer and wine sales, as conditioned, is consistent with the Zoning Ordinance, General Plan, and Local Coastal Plan.

**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.**

Castagnola deli & cafe is compatible and appropriately located within the blend of land uses in the Capitola Village.

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

Sales of beer & wine offered by Castagnola deli & cafe until 8:30pm will not be detrimental to the public health, safety, and welfare. Similar services are currently operating in the Capitola Village.

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

Castagnola deli & cafe is properly located within the Capitola Village area and has been a business operating in good standing. The property is adequately served by services and infrastructure.

**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.

### **Design Permit Findings**

- A. The sidewalk dining area or street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.**

The proposed sidewalk dining area formalizes what the owner was allowed under the Covid-19 Temporary Use Agreement. The proposal complies with the zoning code and the owner is pursuing a license with ABC.

- B. If located in the coastal zone, the sidewalk dining area or street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.**

The proposed sidewalk dining is required to maintain a five foot clearance for all associated furniture, tables, chairs, and umbrellas.

- C. The design of the sidewalk dining area or street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).**

The sidewalk dining area will allow the owner to expand the business under newer code sections that allow limited outdoor dining options without requiring parking upgrades. As conditioned, the sidewalk dining will not be permitted for beer and wine consumption.

- D. The sidewalk dining area or street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.**

The applicant has been using wrought iron style bistro tables and chairs painted black. These tables and chairs are classic and durable design.

### **Coastal Findings**

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

The proposed project conforms to the City's certified Local Coastal Plan (LCP) land use plan and the LCP implementation program.

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

The proposed project has no impact on view or coastal access.

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

The proposed project will have no impact on vegetation or habitat.

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

The project has no impact on recreation access or cost and maintenance all required sidewalk clearances.



5. **The project maintains or enhances opportunities for visitors.**  
The project has no negative impact on visitors and opportunity.
6. **The project maintains or enhances coastal resources.**  
The proposed project has no impact on coastal resources.
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.**  
The proposed project complies, as conditioned, with local and state laws regarding outdoor dining, parking, beer and wine service, and parking.
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 not obstruct public access and has no impact on recreation or visitor opportunities and experiences.

Report prepared by: Brian Froelich