

Capitola Planning Commission

Agenda Report



Meeting: FEBRUARY 3, 2022
From: Community Development
Address: 1820 41ST Avenue, Suite A

Permit Number: #21-0429

APN: 034-131-24

Conditional Use Permit Amendment to allow extended hours of delivery sales for alcohol and non-alcohol retail goods from an existing Retail Alcohol Establishment (BevMo) located in the C-R (Regional Commercial) zoning district.

This project is not in the Coastal Zone.

Environmental Determination: Categorical Exemption 15301

Property Owner: Chaboya Ranch

Representative: Philip Olson - BevMo, Filed: 10.11.21

Applicant Proposal: The applicant, Beverages & More (Bevmo) submitted a request for an amendment to an existing Conditional Use Permit (CUP) #08-018 to allow online/app-based delivery sales of alcohol at hours outside the current permitted store hours. Bevmo is located within the Regional Commercial (C-R) zoning district at 1820 41st Avenue, Suite A. 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 June 26, 2008, Bevmo received approval of a CUP #08-018 by the City Council on appeal to begin operating at the current location. The original Planning Commission approval was appealed to City Council by another alcohol retail store owner also located on 41st Avenue. The final local action notice included 15 conditions of approval that are effective currently and are included for reference as Attachment 1 (Existing Conditions of Approval).

Discussion: The current CUP includes the following two conditions of approval related to hours of operation and deliveries.

5. Business hours will be limited to 9:00 A.M. — 9:00 P.M., seven days a week. The last six weeks of the year, November 16 through December 31, the hours will be limited to 9:00 P.M. — 10:00 P.M.

7. Delivery hours shall be limited to 8:00 A.M. — 8:00 P.M. Monday through Friday, to minimize noise impacts to neighboring residents. Delivery vehicles shall not be permitted to remain at idle during non-delivery hours.

The applicant's primary request is for approval of an amendment to CUP condition #5 to allow delivery sales of non-alcohol retail items 24 hours per day to customers and to allow alcohol delivery sales at all hours except as prohibited by State law, between 2 A.M. and 6 A.M. Bevmo

additionally requests to retain the existing in-store shopping hours but modify the condition #5 to clarify that it pertains to “In-Store Hours”.

Condition #7 is applicable to deliveries of stock to the store. The applicant requests that clarification language be added to the condition to specify the applicability of the condition and the difference between deliveries to the store for stock and deliveries from the store to customers. The applicant is proposing the existing conditions be modified as follows:

5. Business hours for in-store shopping will be limited to 9:00 A.M. – 9:00 P.M., seven days a week. The last six weeks of the year, November 16 through December 31, the hours for in-store shopping will be limited to 9:00 A.M. – 10:00 P.M. Online/app sales for delivery to customers can occur 24-hours/day, Monday through Sunday, provided there are no sales/deliveries of alcohol between the hours of 2:00 a.m. and 6:00 a.m.

7. Hours for deliveries to the store shall be limited to 8:00 A.M. – 8:00 P.M. Monday through Friday, to minimize noise impacts to neighboring residents. Delivery vehicles shall not be permitted to remain at idle during non-delivery hours.

Conditional Use Permit

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.

And;

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

- 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.

In issuing a conditional use permit, the Commission may attach conditions to achieve consistency with the general plan, zoning code, and any applicable specific plan or area plan adopted by the City Council.

The existing CUP for 1820 41st Avenue includes several conditions related to hours of operation and tasting, deliveries, exterior lighting, and roof top screening to ensure the likely impacts of the retail use on adjacent residential properties are mitigated through operational and design conditions. Should the Planning Commission decide to approve the amendment, the conditions of the original permit would be included in the amendment along with new conditions related to the modified hours for delivery to protect the adjacent residential properties.

ANALYSIS

In review of the applicant's proposal, Planning staff and the Police Department searched active alcohol sales permits and permit history in Capitola, made inquiry with nearby jurisdictions to understand how they regulate similar requests, and investigated available app/online based delivery services that deliver locally.

Retail Sales of Alcohol in Capitola

Permit history shows that Capitola has not approved alcohol retail sales past midnight and has regulated alcohol sales through the CUP process dating back through all available records. The only sale of alcohol within Capitola past midnight are for onsite consumption within eating and drinking establishments. These venues may serve alcohol until 2 am, but the majority close by midnight.

Retail Sale of Alcohol within Santa Cruz County

Staff contacted planning staff within the region to assess whether or not retail sales of alcohol are currently taking place after midnight.

- Watsonville does not allow sales past midnight.
- City of Santa Cruz has an ordinance that requires Planning Commission review for sales after midnight. The respondent noted that in their experience applicants had not pursued sales past midnight. They did acknowledge several long-operating stores that offer alcohol sales after midnight likely predate current requirements and are legally-nonconforming.
- Scotts Valley did not respond, however, information available online shows that liquor stores posting their hours close at midnight or before.
- Santa Cruz County responded that each alcohol permit has unique conditions. There are some grocery stores which sell alcohol after midnight. However, the majority of liquor stores close at midnight or before.

Currently available app/online based delivery services

There are several existing app/online based shopping services that will perform a similar delivery service, as proposed by the applicant, for delivery within Capitola. Personal shopping and delivery services will take an order, make purchases at open local stores, and deliver the items, including alcohol.

Police Department Review

Captain Ryan and Chief Dally reviewed the application and provided feedback. The police department is recommending conditioning alcohol sales to commence at midnight to ensure the City is not creating a new opportunity for late night sales of alcohol that could have an impact on health and safety within Capitola and the greater Santa Cruz area. They also recommended that all deliveries beyond store hours be performed through the front door of BevMo for safety and noise. Planning staff has similar concerns with noise for deliveries in the back of BevMo due to the close proximity of residential properties behind Bevmo. Also, since this is the first CUP related to delivery of alcohol sales, Police and Planning staff are recommending a condition be added that the application be reviewed by the Planning Commission in one year.

With the above analysis, and in consideration of allowing the applicant to operate a competitive business, staff is recommending the following modifications to existing conditions #5 and #7 and adding conditions #16 and #17:

5. Business hours for in-store shopping will be limited to 9:00 A.M. – 9:00 P.M., seven days a week. The last six weeks of the year, November 16 through December 31, the hours for in-store shopping will be limited to 9:00 A.M. – 10:00 P.M. Online/app sales for delivery to customers may occur until midnight, Monday through Sunday, provided there are no sales/deliveries of alcohol between the hours of 12:00 A.M. and 6:00 A.M. Delivery of non-alcoholic consumer goods can occur 24 hours per day.

7. Hours for deliveries to the store shall be limited to 8:00 A.M. – 8:00 P.M. Monday through Friday, to minimize noise impacts to neighboring residents. Delivery vehicles shall not be permitted to remain at idle during non-delivery hours.

16. All delivery services of store goods to customers must utilize the front door facing 41st Avenue and parking in front of the store. Delivery services to customers are prohibited from parking or idling vehicles behind the store or idling at delivery locations. Deliveries to customers after store hours shall utilize two-axle passenger vehicles. Use of delivery trucks, moving vans, vehicles equipped with roll up doors or lift gates, back-up alarms, and deliveries that necessitate use of a hand truck or pallet jack are not permitted.

17. A one-year review of the amendment to the conditional use permit by the Planning Commission is required to ensure all impacts of the delivery service are adequately assessed. During the one-year review, the Planning Commission may modify conditions as necessary to ensure health and safety. The review shall be scheduled during the first half of 2023 and will require a cost recovery deposit paid by the applicant.

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 within an existing commercial 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 amendment to the Conditional Use Permit based on the following amended Conditions of Approval and updated Findings.

Recommended Conditions of Approval:

1. The project approval consists of a Conditional Use Permit for the off-site retail sale of alcohol (Beverages and More! Inc.) in addition to the limited wine and beer tasting at 1820 41st Avenue. The original CUP application #08-018 was approved on June 26, 2008, by the City Council. The amendment to the CUP application #21-0429 was approved by Planning Commission on February 3, 2022.
2. Beer and wine tasting shall be limited to Friday 4:00 P.M. – 7:00 P.M and Saturday, 12 Noon – 6:00 P.M. Tasting shall also be allowed on Valentines Day, St. Patrick's Day, Cinco de Mayo, Halloween, day before Thanksgiving, and New Year's Eve from 4:00 P.M. – 7:00 P.M.

3. 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.
4. The application shall be reviewed by the Planning Commission upon evidence of non-compliance with conditions of approval or applicable municipal code provisions.
5. Business hours for in-store shopping will be limited to 9:00 A.M. – 9:00 P.M., seven days a week. The last six weeks of the year, November 16 through December 31, the hours for in-store shopping will be limited to 9:00 A.M. – 10:00 P.M. Online/app sales for delivery to customers can occur until midnight, Monday through Sunday, provided there are no sales/deliveries of alcohol between the hours of 12:00 a.m. and 6:00 a.m. Delivery of non-alcoholic consumer goods can occur 24 hours per day.
6. The applicant shall ~~obtain~~ maintain a current business license prior to operating the business.
7. Hours for deliveries to the store shall be limited to 8:00 A.M. – 8:00 P.M. Monday through Friday, to minimize noise impacts to neighboring residents. Delivery vehicles shall not be permitted to remain at idle during non-delivery hours.
8. Air-conditioning equipment or other roof top equipment shall be screened from view and fall within allowable city permitted decibel levels.
9. Trash enclosures shall be covered, gated, and maintained to provide a clean and sanitary area.
10. Security lighting in the rear of the store shall be shielded to prevent light from shining in the neighboring properties.
11. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with the building permit submittal.
12. The applicant shall develop, submit, and enact a plan for the use and control of their carts, including a plan to collect carts removed from their property.
13. The applicant shall submit a lighting plan for the parking lot area, for review and approval by the Community Development Department prior to, or in conjunction with the building permit submittal. The parking lot lighting shall be shielded to prevent light from shining on the neighboring properties.
14. The applicant shall submit a landscape plan for the parking lot area, for review and approval by the Community Development Department prior to, or in conjunction with the building permit submittal. The landscape plan shall meet the 41st Avenue Design Guidelines.
15. The applicant shall comply with the Municipal Code Section 8.36 Environmentally Acceptable Packaging Materials.

16. All delivery services of store goods to customers must utilize the front door facing 41st Avenue and parking in front of the store. Delivery services to customers are prohibited from parking or idling vehicles behind the store or idling at delivery locations. Deliveries to customers after store hours shall utilize two-axle passenger vehicles. Use of delivery trucks, moving vans, vehicles equipped with roll up doors or lift gates, back-up alarms, and deliveries that necessitate use of a hand truck or pallet jack are not permitted.
17. A one-year review of the amendment to the conditional use permit by the Planning Commission is required to ensure all impacts of the delivery service are adequately assessed. During the one-year review, the Planning Commission may modify conditions as necessary to ensure health and safety. The review shall be scheduled during the first half of 2023 and will require a cost recovery deposit paid by the applicant.

Findings:

- A. The proposed use is allowed in the applicable zoning district.**
Sales and delivery of alcohol are permitted through a conditional use permit in the C-R 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 retail space with alcohol sales and delivery, 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.**
1820 41st Avenue is located in the 41st Avenue/West Capitola area, an area capable of handling larger vehicular volume, has plentiful parking, and suburban commercial developments that serve a variety of eating and drinking establishments and larger scale retail spaces. Allowing delivery and later hours to stage from the front of the building is compatible with existing and planned uses.
- D. The proposed use will not be detrimental to the public health, safety, and welfare.**
Delivery of alcohol goods offered by Bevmo until midnight will not be detrimental to the public health, safety, and welfare. Similar services are currently operating in Capitol and surrounding communities.
- E. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.**
1820 41st Avenue is properly located within the 41st Avenue/West Capitola area and 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 a minor modification to the retail delivery services for the business and minor changes to the interior inventory. No adverse environmental impacts were discovered during review of the proposed project.