

# Capitola Planning Commission

## Agenda Report



**Meeting:** May 2, 2024

**From:** Community Development Department

**Address:** 115 San Jose Avenue

---

**Project Description:** Permit #24-0036. APN# 035-221-18 &19. Proposed amendments to the Master Conditional Use Permit (MCUP) for the mixed-use Capitola Mercantile to allow off-site sale of alcoholic beverages and extend hours of operation to 11pm on Thursday, Friday, and Saturday (currently 10pm); a proposed Tenant Use Permit and Sign Permit for the Hops Shop a new take-out restaurant/tasting room to operate in Suite #101 and use Suite #103 for storage; and a Design Permit for a modified porch roof in the MU-V (Mixed-Use Village) zoning district. This project is in the Coastal Zone but does not require a Coastal Development Permit.

**Recommended Action:** Consider Permit #24-0036 and approve the Tenant Use Permit, Sign Permit, Design Review, and amendments to the Master Conditional Use Permit with the recommended conditions of approval and deny the requested change to hours of operation.

**Property Owner:** Capitola Associates, LLC

**Representative:** Evan Jaques, filed: 01.24.2024

**Background:** The subject property is centrally located within the Capitola Village between San Jose Avenue and the Esplanade. The Capitola Mercantile contains 12 commercial tenant spaces, totaling 7,788 square feet, which are currently a mix of retail, entertainment, and restaurant establishments. The development also includes the adjacent building (APN# 035-221-19) which includes a two-story structure with a 1,185-square-foot residential space on the second floor and a 535-square-foot garage. The Mercantile is surrounded by one- and two-story structures with retail, restaurant, and hotel uses.

The applicant is applying for:

- 1) Tenant Use Permit to establish a tasting room and takeout restaurant at the Capitola Mercantile operating with a Type 41 liquor sales license (Beer & Wine) and Sign Permit for associated signage,
- 2) Amend existing Master Conditional Use Permit (MCUP) conditions related to the sale of alcohol and business hours, and,
- 3) Requesting a Design Permit for a material change at the porch roof structure at the main entrance along the Esplanade and for window signage.

The Capitola Mercantile is currently operating with a MCUP (#19-0186) that was approved by the Planning Commission on May 7, 2020. The MCUP approval outlined the types of uses that are permitted in the tenant spaces, how the shared use areas can be used, parking, and established operational conditions of approval for the Mercantile property (Attachment 2).

Pursuant to the MCUP, establishing new tenants is generally allowed with only a staff review of a Tenant Use Permit (TUP) to verify that the new use is compatible with the MCUP. In this case, however, the applicant is proposing to modify MCUP operational conditions of approval related to hours of operation and off-site sales of alcohol, which requires Planning Commission review.

**Development Standards:** The applicant is not proposing to enlarge the structure; therefore, the typical development standards for height, setbacks, and floor area ratio are not analyzed within the staff report. A change of use typically requires parking analysis. However, parking was reviewed with the MCUP

approval in 2020 and in 2005 with a Conditional Use Permit (CUP) #05-035, which permitted the expansion of Caruso's from a take-out restaurant to a standard sit-down restaurant. With both permits, the existing 41 parking spaces on the property were found to be adequate because uses in a mixed-use development have different peak use time periods and therefore "combined require less parking than if the same land uses were separately developed." The proposed tasting room and takeout restaurant use does not impact how parking was previously evaluated. The Hops Shop will use a tenant space that was previously occupied by a takeout restaurant that operated with a Type 41 alcohol license (Little Koe's).

**Discussion:** The 2020 MCUP outlined the types of uses that are permitted in the Capitola Mercantile building. Takeout restaurants, tasting rooms, and retail are permitted, but with the limitation of six customer seats and 160 square feet of area open for customer consumption. The project plans demonstrate compliance by showing two seats and an interior customer area of 125 square feet (Attachment 1). The applicant also intends to use the 'shared premises' areas.

### Shared Premises

The MCUP allows Capitola Mercantile businesses that sell beer and wine under a Type 41 license to utilize the interior and exterior quasi-public seating areas as 'shared premises for consumption of beer and wine. In 2020, Capitola staff worked with staff the State ABC Licensing Department to establish the boundaries of the 'shared premises' areas where consumption of alcohol is allowed under the MCUP (Attachment 3). These areas include the quasi-public seating areas in the lobby through the center of the building, an outdoor patio adjacent to the main entrance to the building along Esplanade, and a small outdoor patio adjacent to the southwest entrance adjacent to the three apartments along Esplanade. The applicant intends to allow customers to use these areas for consumption and is actively working with ABC to secure a type 41 license.

### Master Conditional Use Permit

A Master Conditional Use Permit (MCUP) explicitly allows a variety of principally permitted and conditionally permitted uses as permitted uses within a specific location. A tenant may change one use to another use administratively if the proposed use is established as an allowed use in the MCUP. MCUPs are regulated under Capitola Municipal Code (CMC) §17.124.100 "Master conditional use permits – Tenant use permits."

Hours of Operation: The MCUP limits hours of operation of the 'shared premises' areas from 8am to 10pm (Condition 7). The applicant is proposing to extend the hours of operation from 8am to 11pm on Thursday – Saturday, three nights of the week. Currently, the only businesses that remain open past 10pm in the Capitola Village are bars with full liquor licenses and adequate interior space for customers, as follows:

- Zeldas – 2am
- Sand Bar – 1am or 2am
- Britannia Arms – 2am
- Bay Bar – 2am

Capitola Municipal Code (CMC) Section 9.12.010 prohibits businesses from engaging in operations that makes loud or boisterous noise, within 200 feet of any building or place regularly used for sleeping purposes between the hours of 10pm and 8am. The proposed request would be a potential conflict with the noise ordinance due to outdoor patio locations within 200 feet of the hotel.

Additionally, Capitola Municipal Code Section 17.96.170: Outdoor dining in the public right-of-way, limits outdoor dining in the public right-of-way to the hours of 7am to 10pm. While this section is not directly applicable to the proposal, the proposed use will function and have impacts similar to sidewalk dining or a street dining deck with reliance on outside customer use areas in a densely developed neighborhood.

The 'shared premises' outdoor patios are located adjacent to the Capitola Hotel and second story residential units. Within a MCUP, a finding must be made that "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." Staff is unable to make compatibility findings cannot be made for extending hours of operation to 11pm due to the proximity to a hotel and residences to the outdoor shared premise areas.

#### Off-Site Sales:

The applicant is proposing to remove the MCUP 'Shared Premises' Condition 9 which prohibits the sale of alcoholic beverages for consumption off the premises. Alcoholic beverage sales require a conditional use permit in the Mixed Use Village. In working with ABC and the Police Department, staff understands that this condition was included in the 2020 MCUP to prevent the potential for open container violations. The Police Department and ABC do not have concerns with removal of this condition. The applicant would sell beer, wine, hard kombucha, hard seltzer and similar items from display refrigerators. Cans or bottles sold for consumption on site would be provided with a glass that is distinct by design (logo) or color (MCUP condition 2).

There are several conditions of the MCUP related to the 'Shared Premise' that would need to be modified to accommodate the applicant's proposal. See below in strike and underline:

1. Alcoholic beverages shall be sold and served in containers that are distinctive in design ~~and or~~ color and are easily distinguishable from containers used in the service of non- alcoholic beverages;
2. Petitioner(s) will only serve their alcohol beverages in containers which shall significantly differ in appearance from those containers utilized by any other licensees located in the Capitola Mercantile. Customers that purchase cans or bottles for onsite consumption shall be provided with distinctive containers;
3. A sign shall be posted in a conspicuous space at the entrance/exit point of said patio/terrace/other area, which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT". Said sign shall measure no less than seven inches by eleven inches (7" x 11") and contain lettering no less than one (1) inch height;
4. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the most recently certified ABC-257 and ABC-253;
5. Any violations of the law occurring on the licensed premises as depicted on the most recently certified ABC-257, constituting grounds for suspension or revocation of a license shall be deemed to be the act and responsibility of all licensees therein licensed within the premises;
6. Petitioner(s) shall actively monitor the area under their control in an effort to prevent the loitering of persons on any property adjacent to the licensed premises as depicted on the most recently certified ABC-253;
7. Sales, service and consumption of alcoholic beverages shall be permitted in or on the patio area only between the hours of 8am to 10pm on Sunday through Wednesday and 8am to 11pm on Thursday through Saturday each day of the week;
8. Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as depicted on the most recently certified ABC-257; and
9. ~~The sale of alcoholic beverages for consumption off the premises is prohibited.~~

**\*Planning staff does not support amendments to condition 7 above.**

#### MCUP Conditions:

The MCUP also has a list of standard conditions that apply to all uses and tenants. Staff is recommended that five conditions be added, as follows:

6. The garbage area shall be maintained to prevent odors and provide screening from the street and screening from adjacent neighbors.

7. Outdoor lighting that is not required for safety/egress on the building shall be turned off within half an hour of the closing time of the business.
8. Food and beverage equipment and supplies (including kegs) shall be stored inside the building. Exterior storage is prohibited.
9. New food and beverage tenants shall obtain all required approvals and final inspections from the Santa Cruz County Department of Environmental Health, prior to opening.
10. An onsite restroom shall be available to customers at all times during business hours.

50% alcohol serving

The MCUP limits the tenant space area within the Capitola Mercantile for uses that sell or dispense alcohol to 50%. The following table shows the current and proposed tenant use mix and square footages:

<b>Capitola Mercantile – Uses</b>		
<b>Space #</b>	<b>Current Use</b>	<b>Sq. Ft.</b>
101	To-Go Restaurant – Proposed Hops Shop	<b>324</b>
102	Gaming Arcade	634
103	Storage – Proposed Hops Shop	<b>189</b>
104	Gaming Arcade	313
105	Retail	974
106	Gaming Arcade	451
107	Coffee Shop	<b>314</b>
108	Retail	768
109	Restaurant – Caruso’s	<b>578</b>
110	Restaurant – Wine Bar	<b>877</b>
111	Vacant – expired CUP #19-0322	1,001
Left Coast Sausage	To-Go Restaurant	<b>180</b>
APN – 035-221-19 Apartment	Residential/Vacation Rental	1,185
Total		7,788
50%		3,894
Total w/ABC license		<b>2,462&lt;50%</b>

**\*Numbers in bold indicate a tenant with an alcohol license.**

Window Signs

The applicant is proposing a circular vinyl “Hops Shop” window sign that is 2.75 square feet at the northwest building frontage. The applicant is also proposing three 1.6 square foot neon window signs that read “Open”, “Arcade, and “Coffee” on the same frontage. Window signs are permitted to cover 25% of the individual window that they are mounted in. As shown in plan sheet 1, the signs will be mounted in three windows and will not exceed 25% of any window. Aside from the window coverage requirements, total signage area is permitted at a ratio of 0.5 square feet per linear foot of building frontage in the MU-V zone. The frontage facing the Esplanade has a linear frontage of 51 feet and results in a maximum sign area along this frontage of 25.5 square feet. The proposed signs total about 7.55 square feet and comply with standards.

The applicant has communicated to staff an intention to propose a comprehensive Master Sign Program for the Mercantile building in the coming months. The current approach with minimal signs is an effort to open the business quickly.

## Design Review

The applicant is requesting a Design Permit of a roofing change from an awning roof to a standing metal seam roof at the northwest façade. This change was completed without the benefit of permits. The applicant is now seeking retroactive approval and will be required to follow through with a Building Permit and pass inspections. The Building Official has completed a safety inspection and noted that there was no change to the underside or support structure. According to the applicant, the prior roof was an awning over roof sheathing and had lost its waterproofing qualities. The metal seam roof is architecturally consistent with the Annex building, which has the same roof type.

Exterior modifications to commercial buildings that do not increase floor area require a Minor Design Permits and are typically reviewed administratively. In this case, the applicant has requested the Design Permit be reviewed with this request for permit efficiency purposes.

When considering Design Permit applications, the city shall evaluate applications to ensure that they satisfy the following criteria, comply with the development standards of the zoning district, conform to policies of the general plan, the local coastal program, and any applicable specific plan, and are consistent with any other policies or guidelines the city council may adopt for this purpose. To obtain design permit approval, projects must satisfy these criteria to the extent they apply. Planning staff has prepared specific analysis for the following list of Design Review Criteria that are more directly applicable to the proposed project. The complete list of Design Review Criteria is included as Attachment 4.

B. Neighborhood Compatibility. The project is designed to respect and complement adjacent properties. The project height, massing, and intensity are compatible with the scale of nearby buildings. The project design incorporates measures to minimize traffic, parking, noise, and odor impacts on nearby residential properties.

Staff Analysis: The change from a canvas awning to a standing seam metal roof provides for a more durable material which will require less maintenance overtime. The design is compatible with existing structure and complements adjacent properties.

**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 issuance of permits for a takeout restaurant that serves beer and wine in a tenant space that has been similarly occupied previously. No adverse environmental impacts were discovered during the project review by either Planning Department Staff or the Planning Commission.

### **Master Conditional Use Permit Findings:**

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

The MU-V zone allows for takeout restaurants and tasting rooms provided the uses are conditioned to ensure compatibility within the context of surrounding uses. The proposed business, without the offsite sales component, could operate under the existing master conditional use permit. In this case, the applicant is proposing amendments to the MCUP, which requires Planning Commission review.

#### **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 consistent with the General Plan or Zoning Ordinance. The site has a General Plan designation of Village Mixed-Use, which allows for the proposed use. The MU-V zone allows for commercial uses including takeout businesses, retail, and beer and wine sales, provided the uses are conditioned to ensure compatibility with nearby uses.

#### **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.**

The proposed use area is limited to a capacity of internal six seats for customers and limited business hours requiring closure by 10 pm is compatible with the existing mixed-use land uses in the vicinity. The proposed use will utilize the “shared use” areas that are available to all Mercantile tenants. Conditions of approval regarding sound not being audible offsite and hours of operation are included in the permit to minimize possible noise impacts on neighbors.

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

Takeout food establishments and beer and wine sales are conditionally permitted in the MU-V and allowed in the Mercantile. The proposal does not introduce any new customer area that has not been similarly used by past tenants and the potential impacts to public health, safety, and welfare to adjacent residents and businesses are mitigated by the conditions of approval.

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

The proposed use is conditionally permitted in the MU-V zone. Potential impacts to nearby residents and businesses have been considered and conditions of approval have been added to mitigate potential impacts. The site is adequately served by existing services and infrastructure.

**Design Permit Findings:**

**A. The proposed project is consistent with the general plan, local coastal program, and any applicable specific plan, area plan, or other design policies and regulations adopted by the city council.**

Community Development Staff and the Planning Commission have reviewed the project. The proposed roof modification complies with the applicable development.

**B. The proposed project complies with all applicable provisions of the zoning code and municipal code.**

Community Development Staff and the Planning Commission have reviewed the application for the modified roof. The proposed metal seam roof will comply with all applicable provisions of the zoning code and municipal code.

**C. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).**

Section 15301 of the CEQA Guidelines exempts minor exterior changes. No adverse environmental impacts were discovered during project review by Planning Department Staff.

**D. The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.**

The proposed roof modification will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.

**E. The proposed project complies with all applicable design review criteria in Section 17.120.070 (Design review criteria).**

The Community Development Staff and the Planning Commission have reviewed the application. The proposed roof modification complies with all applicable design review criteria in Section 17.120.070.

**F. The proposed project maintains the character, scale, and development pattern of the neighborhood.**

Community Development Staff and the Planning Commission have all reviewed the application for design and context. The proposed project complies with all measurable development standards for the zone and is similar in scale to nearby developments.

**Conditions of Approval:**

1. The project approval consists of a Master Conditional Use Permit Amendments, a Tenant Use Permit to establish a takeout restaurant/tasting room, and a Design Review to change a portion of the roofing material for the mixed-use Capitola Mercantile. The proposed project is approved as indicated on the final plans reviewed and approved by the Planning Commission on May 2, 2024, except as modified through conditions imposed by the Planning Commission during the hearing.
2. Prior to construction, a building permit shall be secured for any new construction or modifications to structures authorized by this permit. All construction and site improvements shall be completed according to the approved plans.
3. The Planning Department shall perform a final inspection, prior to initiating beer and wine sales. Prior to the Planning Department final inspection, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Community Development Director.

**Attachments:**

1. 115 San Jose Avenue – Project Plans
2. MCUP uses, restrictions, and conditions with edits (underline and strike)
3. Shared Premises Plan
4. Design Review Criteria

Report Prepared By: Brian Froelich, Senior Planner

Reviewed By: Austin Westly, Deputy City Clerk

Approved By: Katie Herlihy, Community Development Director