

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CAPITOLA, CALIFORNIA UPHOLDING THE PLANNING
COMMISSION'S DECISION TO DENY APPLICATION #22-
0282 AT 401 CAPITOLA AVENUE (APN# 035-131-11) AND
APPROVING A MODIFIED PROJECT**

WHEREAS, applicant Amy Cheng (“Applicant”) submitted an application for a proposed Conditional Use Permit, Parking Variance, and Coastal Development Permit to establish a restaurant that serves beer and wine on a property with no parking at 401 Capitola Avenue located within the MU-N (Mixed Use Neighborhood) zoning district. (“Project”); and

WHEREAS, the Project requires approval of a Conditional Use Permit, Parking Variance, and Coastal Development Permit; and

WHEREAS, the Planning Commission of the City of Capitola did hold a duly noticed public hearing on December 1, 2022, at which time it considered all oral and documentary evidence presented, and voted to deny the Project by a 3-0 vote, citing an inability to make findings for approval; and

WHEREAS, the Applicant submitted a timely appeal (“Appeal”) on December 9, 2022; and

WHEREAS, the City Council of the City of Capitola did hold a duly noticed public hearing on March 23, 2023, at which time it considered the Appeal, including all oral and documentary evidence presented; and

WHEREAS, during the Appeal hearing, modifications to the Project (“Modified Project”) were presented and considered, consisting of maintaining the existing “takeout” establishment with the following added conditions:

- a. Sales of beer and wine for onsite consumption shall be limited to less than 50% of the existing tap system (15 or less).
- b. Daily close of business shall be 8pm.
- c. The kitchen facilities and meal provisions shall be acceptable to the Department of Alcoholic Beverage Control in order to operate with a type 41 license.
- d. The applicant shall obtain all required approvals and final inspections from the Santa Cruz County Department of Environmental Health, prior to final inspection.
- e. A maximum of six seats shall be deployed inside the building or on the front porch. Customer use of the exterior is limited to and confined to the covered front porch area. Customers shall not use the side or rear yards at any time.

- f. The applicant shall install signage at the exit to the front porch stating, “no alcoholic beverages beyond this point” and “please be considerate of our neighbors” and any additional signage required by code.
- g. Entertainment Permits are prohibited in conjunction with this Conditional Use Permit, as defined by section 5.24.010, to minimize impacts on the surrounding neighborhood.

WHEREAS, after closing the public hearing, the City Council directed staff to bring forward a resolution upholding the Planning Commission’s denial of the original project application and approving the Modified Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Capitola as follows:

- A. The above recitals are true and correct and material to this Resolution.
- B. In making its findings, the City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

BE IT FURTHER RESOLVED THAT the City of Capitola City Council hereby makes the following findings regarding the Modified Project:

Conditional Use Permit Findings

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

The MU-N zone allows for certain commercial uses provided the uses are conditioned to ensure compatibility with the neighboring residential uses. The existing takeout business in the MU-N zoning district is operating under an active conditional use permit, and the addition of the sale of beer and wine is allowed in the MU-N zoning district with the issuance of a conditional use permit. In addition, the business will continue to operate with a limit of six seats and utilize the same customer areas as the existing establishment.
- 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 Mixed-Use Neighborhood, which allows for uses compatible with the eclectic mixed use neighborhood. The MU-N zone allows for commercial uses including takeout businesses and beer and wine sales, provided the uses are conditioned to ensure compatibility with the neighboring residential 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 Modified Project with its limited capacity of six seats for customers and limited business hours requiring closure by 8 pm is compatible with the existing mixed-use land uses in the vicinity. As conditioned, the Modified Project will improve bicycle parking with 6 additional bicycle parking spaces. Conditions of approval regarding entertainment, speakers, limited outdoor occupancy areas, and hours of operation are included in the permit to ensure possible noise impacts on neighbors from the introduction of a self-pour tap system for beer and wine are mitigated.
- 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-N. The proposal does not introduce any new customer area and 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-N 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.

Coastal Findings

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

The proposed project is consistent with LCP land use plan and implementation policy. The existing use is modified to allow beer and wine sales with no impact to coastal resources.

2. The project maintains or enhances public views.

The proposed project has no permanent impact on views.

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

The proposed project has no impact on vegetation, natural habitats or natural resources.

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

The project has no impact on public access to the ocean or beach.

5. The project maintains or enhances opportunities for visitors.

The project has no impact on visitor opportunities.

6. The project maintains or enhances coastal resources.

The proposed project has no impact on natural or environmental 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.

Introduction of beer and wine sales to an existing takeout establishment has no impact to the exterior of the property and will generally retain the existing operating characteristics as conditioned.

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 have no impact to public access, recreation or visitor opportunities and experiences. The proposed project maintains the existing takeout eating establishment and seating limit.

BE IT FURTHER RESOLVED THAT the City of Capitola City Council hereby upholds the Planning Commission's denial and approves the Modified Project, subject to the following conditions of approval:

Conditions of Approval

1. The Applicant agrees to defend, indemnify, and hold harmless the City of Capitola (“City”), its agents, officers and employees from any claim, action or proceeding to attack, set aside, void, or annul the approval of this Modified Project. The City shall have sole discretion in selecting its defense counsel. The City shall promptly notify the Developer of any claim, action or proceeding and shall cooperate fully in the defense.
2. The project approval consists of an Amended Conditional Use Permit to allow Beer and Wine Sales to an existing take-out eating establishment with a maximum of 6 seats. The proposed project is approved as indicated on the final plans reviewed and approved by the City Council on April 27, 2023. The sale of beer and wine is limited to a Type 41 License through the State of California Department of Alcoholic Beverage Control.
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.
4. There shall be no amplified audible entertainment inside the business that can be audible outside of the business. Outdoor speakers are prohibited per section 9.12.040.
5. The applicant is responsible for maintaining the area directly in front of the business free from litter and/or graffiti.
6. All chairs shall be stored inside the main building when the business is closed.
7. The garbage area shall be maintained to prevent odors and provide screening from the street and screening from adjacent neighbors.
8. Outside 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.
9. If a building permit is required for any tenant improvements authorized by this Amended Conditional Use Permit, it will be secured prior to commencement of new construction or interior modifications. Final building plans shall be consistent with the plans approved by the City Council on April 27, 2023. All construction and site improvements shall be completed according to the approved plans.
10. At time of submittal for building permit review, if required, the Conditions of Approval must be printed in full on the cover sheet of the construction plans.
11. At time of submittal for building permit review, if required, Public Works Standard Detail Best Management Practices (BMP) STRM shall be printed in full and incorporated as a sheet into the construction plans. All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
12. Prior to making any changes to the approved plans, modifications must be specifically requested and submitted in writing to the Community Development Department.
13. Prior to Planning Department final inspection, all Planning fees associated with applications #22-0282 and #23-0030 shall be paid in full.

14. Prior to issuance of a building permit, if required, the applicant must provide documentation of plan approval by the following entities: Santa Cruz County Sanitation Department, Soquel Creek Water District, and Central Fire Protection District.
15. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way.
16. During construction, any construction activity shall be subject to a construction noise curfew, except when otherwise specified in the building permit issued by the City. Construction noise shall be prohibited between the hours of nine p.m. and seven-thirty a.m. on weekdays. Construction noise shall be prohibited on weekends with the exception of Saturday work between nine a.m. and four p.m. or emergency work approved by the building official. §9.12.010B
17. Upon evidence of non-compliance with operational 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.
18. This permit shall expire 24 months from the date of issuance. The applicant shall have an approved building permit and construction underway before this date to prevent permit expiration. Applications for extension may be submitted by the applicant prior to expiration pursuant to Municipal Code section 17.81.160.
19. The planning and infrastructure review and approval are transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.
20. Garbage and recycling containers shall be placed out of public view on non-collection days.
21. Any roof jacks required for future kitchen exhaust systems shall be located on the front half of the roof to minimize the impacts of food odors on adjacent residential properties.
22. The Conditional Use Permit includes 32 taps. The sales of beer and wine shall be limited to less than 50% of the tap system or a maximum of 15 taps.
23. The establishment shall have last call by 7:30 pm and close by 8 pm daily.
24. Prior to Planning Department final inspection, documentation from the Department of Alcoholic Beverage Control showing that the property is in compliance with the State of California requirements to operate with a type 41 license shall be furnished to the Planning Department for record.
25. The applicant shall obtain all required approvals and final inspections from the Santa Cruz County Department of Environmental Health, prior to the Planning Department final inspection.
26. A maximum of six seats shall be allowed for the business. Customer use of the exterior is limited and confined to the covered front porch area. Customers shall not occupy the side or rear yards at any time.

27. The applicant shall install visible signage at the exit from the front porch stating that “no alcoholic beverages beyond this point” and “please be considerate of our neighbors” and any additional signage required by code.
28. The site currently has one bicycle parking rack to accommodate two bicycles in the side yard. It is recommended that the applicant add additional bicycle parking facilities to the property.
29. Food and beverage equipment and supplies (including kegs) shall be stored inside the building. Exterior storage is prohibited.
30. Entertainment Permits are prohibited in conjunction with this Conditional Use Permit, as defined by section 5.24.010, to minimize impacts to the surrounding neighborhood.

BE IT FURTHER RESOLVED that the Modified Project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15332 (Class 32 - Infill). The Modified Project meets the criteria for a Class 32 Infill exemption because 1) the Modified Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; 2) The Modified Project occurs within city limits on a project site of less than five acres and is substantially surrounded by urban uses, namely commercial and residential development; 3) The Modified Project site is covered with a commercial building and limited vegetation and has no value as habitat for endangered, rare or threatened species; 4) Approval of the Modified Project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and 5) The site can be adequately served by all required utilities and public services.

In addition, none of the exceptions to the exemption apply. There are no successive projects known or expected to occur over time that would cause the Modified Project to result in cumulative impacts. There are no unusual circumstances that may result in a significant effect on the environment. The Modified Project will not result in damage to scenic resources within a state scenic highway. The Modified Project site is not known to contain hazardous materials and is not on the Cortese List. Lastly, the Modified Project will not affect historical resources. Therefore, the Modified Project is exempt from CEQA.

REVERSED, APPROVED and ADOPTED by the City Council of the City of Capitola, California, at a regular meeting thereof this 27th day of April, 2023 by the following vote:

AYES:
NAYS:
ABSTAIN:
ABSENT:

MAYOR

ATTEST:

CLERK