



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 4/14/2009
Agenda Placement: 9B
Set Time: 9:30 AM
Estimated Report Time: 10 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Robert Paul for Robert Westmeyer - County Counsel
County Counsel
REPORT BY: Robert Paul, ATTORNEY IV - 253-6113
SUBJECT: Pavitt Appeal - Resolution of Findings of Fact and Decision on Appeal

RECOMMENDATION

County Counsel requests consideration and adoption of a resolution of Findings of Fact and Decision on Appeal granting the appeal filed by Charles Meibeyer, Esq., on behalf of Shane and Suzanne Pavitt regarding the decision by the Conservation, Development and Planning Commission on December 17, 2008 denying a request for a Variance (P06-001427 VAR) to allow an existing barn that encroaches 464 feet into the 600 foot winery setback from Silverado Trail to be converted to a winery. The project is located on a 22.84 acre parcel on the east side of Silverado Trail, approximately 600 feet north of its intersection with Dunaweal Lane within an Agricultural Watershed (AW) Zoning District. (Assessor's Parcel No. 020-350-026), 4660 Silverado Trail, Calistoga.

ENVIRONMENTAL DETERMINATION: Categorical Exemption Class 3: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 3 ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

The project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

EXECUTIVE SUMMARY

At the appeal hearing on March 17, 2009, the Board heard and considered a staff presentation, and arguments

from the Appellant and other interested parties. After considering the evidence as presented in the administrative record and the arguments thereon, the Board closed the Public Hearing and adopted a motion of intent to (1) reverse the decision of the Planning Commission and grant the appeal; (2) find that granting the requested Variance qualifies for Class 3 Categorical Exemption under State CEQA Guideline 14 CCR 15303; and (3) direct the Planning Commission to consider the associated proposed Winery Use Permit (P06-001426 UP).

PROCEDURAL REQUIREMENTS

1. Staff reports.
2. Chair invites interested parties to comment on the proposed findings.
3. Motion, second, discussion and vote on findings.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Categorical Exemption Class 3: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 3 ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

BACKGROUND AND DISCUSSION

At the appeal hearing on March 17, 2009, the Board heard and considered a staff presentation, and arguments from the Appellant and other interested parties. After considering the evidence as presented in the administrative record and the arguments thereon, the Board closed the Public Hearing and adopted a motion of intent to (1) reverse the decision of the Planning Commission and grant the appeal; (2) find that granting the requested Variance qualifies for Class 3 Categorical Exemption under State CEQA Guideline 14 CCR 15303; and (3) direct the Planning Commission to consider the associated proposed Winery Use Permit (P06-001426 UP).

The proposed resolution reflects the Board's intent as expressed on March 17, 2009.

SUPPORTING DOCUMENTS

A . Resolution

CEO Recommendation: Approve

Reviewed By: Maiko Klieman



A Tradition of Stewardship
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Agenda Date: 3/17/2009
Agenda Placement: 9G
Set Time: 9:45 AM PUBLIC HEARING
Estimated Report Time: 1-1/2 Hours

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: Mary M Doyle, PLANNER III - 299-1350
SUBJECT: Shane & Suzanne Pavitt Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Charles Meibeyer on behalf of his clients, Shane and Suzanne Pavitt, of a decision by the Conservation, Development and Planning Commission on December 17, 2008, denying a request for a Variance (P06-001427 VAR) to allow an existing barn that encroaches 464 feet into the 600 foot winery setback from Silverado Trail to be converted to a winery. Since the Variance request was denied, no action was taken on the associated proposed Winery Use Permit (P06-001426 UP) requesting the establishment of a new 10,000 gallon winery to be housed in the existing barn. The project is located on a 22.84 acre parcel on the east side of Silverado Trail, approximately 600 feet north of its intersection with Dunaweal Lane within an Agricultural Watershed (AW) Zoning District. (Assessor's Parcel No. 020-350-026), 4660 Silverado Trail, Calistoga.

ENVIRONMENTAL DETERMINATION: If the Board denies the appeal, such action is not subject to CEQA, as CEQA does not apply to a project which a public agency rejects or disapproves. Guidelines for the implementation of the California Environmental Quality Act at 14 CCR 15279(a); see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Section 506.

If the Board grants the appeal, the Board should find the Variance request qualifies for a Class 3 Categorical Exemption under State CEQA Guideline 14 CCR 15303 ("New Construction or Conversion of Small Structures"); see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B. If any action is taken on the associated Winery Use Permit, the same Class 3 Categorical Exemption would be applicable.

The project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

EXECUTIVE SUMMARY

The hearing before the Board is to consider an appeal filed by Charles Meibeyer, on behalf of project applicants Shane and Suzanne Pavitt (collectively "Appellant"), to the Planning Commission's December 17, 2008 decision to deny Variance #P06-01427 VAR ("Variance") which would allow an existing barn to encroach 464 feet into the 600 foot winery setback requirement from Silverado Trail. Appellant's appeal materials also includes discussion of the denial of Winery Use Permit #P06-014226 UP ("Use Permit"), which would have allowed the existing barn to be converted to a winery. The granting of the Use Permit was dependent on the granting of the Variance. Since the Planning Commission denied the Variance, no action was taken on the Use Permit. Should the Board grant the appeal, the Use Permit should be remanded back to the Planning Commission for consideration and action.

The appeal contends that the requested Variance is not precedent setting, based on prior variances which have been granted in similar circumstances allowing wineries within the required setback from Silverado Trail. Appellant further asserts that there are no other appropriate sites on the property upon which the requested winery could be located. Special circumstances exist applicable to Appellant's property such that strict application of zoning regulations deprives Appellant's property of privileges enjoyed by other properties in the vicinity and under identical zoning classifications.

PROCEDURAL REQUIREMENTS

1. Staff report (based upon the documentary record) gives the procedural background of the case.
2. Where the decision being appealed was made after a public hearing which was recorded, the Board is required to make its decision on appeal based on the following three sources of information unless the Board makes the determination under (4):
 - A. The documentary record before the deciding officer or commission; and
 - B. The transcription of the hearing(s) before the deciding officer or commission; and
 - C. Such additional evidence that could not have been presented at the hearing before the deciding officer or commission.
3. Where the decision being appealed was made after a public hearing which was recorded but at the beginning of the appeal hearing an interested party requests that the record be augmented or that the matter be heard de novo, the Board must first decide whether "good cause" (a substantial reason) exists to deviate from (2) to do one of the following:
 - A. Permit additional evidence that could have been presented at the earlier hearing before the deciding officer or commission but was not in fact presented; or
 - B. Hear the matter de novo.Any motion made by a member to allow additional evidence beyond what was presented to the original deciding officer or commission or hear all relevant evidence (de novo hearing) should identify the specific facts presented that support the required good cause finding. If no member makes such a motion, the request will be considered denied.
4. Conduct the appeal based on the evidence to be considered as decided in Steps 2 and 3.
5. After the Board has heard testimony and received evidence from the appellant, staff and interested parties supporting each, Chair closes the public hearing.
6. A member of the Board makes, and a second member seconds a motion of intent to either deny or uphold the appeal and refer the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.
7. Chair calls for the Vote on the motion of intent to either deny or uphold the appeal and refer the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL IMPACT: If the Board denies the appeal, such action is not subject to CEQA, as CEQA does not apply to a project which a public agency rejects or disapproves. Guidelines for the implementation of the California Environmental Quality Act at 14 CCR 15279(a); see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Section 506.

If the Board grants the appeal, the Board should find the Variance request qualifies for a Class 3 Categorical Exemption under State CEQA Guideline 14 CCR 15303 ("New Construction or Conversion of Small Structures"); see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B. If any action is taken on the associated Winery Use Permit, the same Class 3 Categorical Exemption would be applicable.

The project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

BACKGROUND AND DISCUSSION

The request for the Variance (and secondarily the Use Permit for a 10,000 gallon winery on which no action was taken by the Planning Commission) is to allow the conversion an existing barn into a winery, which would encroach 464 feet into the 600 foot winery setback of Silverado Trail. The barn was built with accouterments to allow for future conversion to a winery in 2004 and prior to submittal of the proposed winery use permit application. Improvements that support conversion to a winery include a second floor with the structural integrity for supporting barrel storage, water and winery wastewater systems, commercial mechanical/electrical systems, ADA compliant bathroom, parking area, crush pad and 3 holding tanks. The parcel also contains a single family residence, septic system and leach field, pool, detached garage, and water tanks. There is an Agricultural Contract (1981) associated with the parcel. In 2004 an erosion control plan for a 1.8 acre vineyard was approved, although to date the vineyard has not been installed.

The Planning Commission first heard the Variance request on April 2, 2008. Staff recommended denial of the Variance, and requested Appellant propose alternative sites on the subject property for a winery location. At that public hearing, certain neighbors voiced the following concerns with respect to both the Variance and Use Permit requests:

- (1) That the barn had been built as a winery without benefit of a use permit entitlement first;
- (2) The proposed location of the winery was not appropriate;
- (3) The winery would create a source of unacceptable noise, and
- (4) The application materials provided by Appellant contained misrepresentations of fact.

In response, Appellant and Appellant's representatives testified that:

- (1) There was no other location on the parcel outside the 600 foot winery setback suitable for a winery structure. Alternative locations would involve grading on steep slopes, and would be detrimental to the existing natural habitat; and
- (2) The winery project is a land use allowed by County Code and consistent with the General Plan.

After hearing the testimony and considering the evidence, both oral and written, the Planning Commission, by a 3-2

vote, directed staff to return at some future date with findings that would allow the Planning Commission to approve the Variance. The Commission majority reasoned that the existing barn was a suitable location for a small winery structure if the Appellant could come to some accommodation with the neighbors about their concerns, and to address the issue of noise.

The matter was subsequently brought back before the Planning Commission on December 17, 2008. This time staff recommended approval of the Variance and approval of the Use Permit as conditioned. A noise memo and an environmental noise assessment were submitted by Appellant. Efforts to achieve accommodations between Appellant and the neighbors were unsuccessful. Additional neighbor testimony focused on:

- (1) The inaccuracies of Appellant's presentation of the sequence of events necessitating the request for the Variance and Use Permit;
- (2) That the winery noise can not be mitigated; and
- (3) There is no absolute right for a winery to be allowed on this and other similarly configured parcels containing the same physical restraints.

Appellant's representative noted that the issuance of the Variance would not be precedent setting, and provided information on other variances and associated wineries that had been previously approved within the 600 foot set back requirement. It was further pointed out that the Use Permit, with its limited request for visitation, was consistent with County Code requirements.

At the conclusion of the hearing, the Commission voted 3-2 to deny the request for the Variance. With this denial, the Commission did not consider the Use Permit request, as it was moot. The Commission's decision was based on the following factors:

- (1) The proposed location was not appropriate for the winery and there are alternative locations on the site where a winery could be located;
- (2) The findings required for the issuance of the Variance could not be met; and
- (3) The concern that granting the Variance would set a precedent for similar future requests of other property owners.

On January 2, 2009, subsequent to the Planning Commission's decision, and within the prescribed 10-day filing period, an appeal was filed by Appellant.

Stated Basis for the Appeal and Staff Response:

The following outlines the Basis of the Appeal as contained in the Appellant's submittal dated January 2, 2009. For convenience, staff has numbered each issue and provided a summary, but recommends the Board review the actual appeal for additional details. Background materials from the Planning Commission's multiple hearings are also attached, and hearing transcripts should be reviewed.

Appeal Ground 1: Special circumstances exist applicable to Appellant's property, including size, shape, topography, location or surroundings, because of which strict application of the zoning district regulations deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Staff Response: As evidenced by the split votes at both public hearings on the project, it is clear that the Commission carefully and rigorously contemplated the site and zoning constraints while vetting the merits for grant of the requested variance. At the conclusion of the hearing, after careful consideration of all evidence and testimony presented, the majority of the Commission found that grant of the proposed variance was not warranted because there were other suitable locations on the site where a winery could be placed that could have eliminated the need for a variance, or reduced the severity of the variance requested. It is clear from the public record that the site contains several constraints that limit the locations and potential size for any winery on site. However, the majority of the Commission found that placement of the winery, as proposed, and within the existing agricultural

building that appears to have been constructed in anticipation that a winery would be allowed, was not the most suitable location to place a winery on the site due its close proximity and high visibility from Silverado Trail. The 600 ft. winery setback from Silverado Trail was originally established to reduce the visual impact of wineries from major County thoroughfares. The majority of the Commission felt that had they had an opportunity to review the proposed winery building before it was constructed, they would not approved it in the location where it currently exists.

Appeal Ground 2: Grant of the variance is necessary for the preservation and enjoyment of substantial property rights.

Staff Response: The Appellant states that the failure of the Planning Commission to grant the variance denies the property owner of substantial property rights. This assertion is not supportable under State law. The County is in no way obligated to approve a variance simply because the Appellant proposes it. To the contrary, approval of a variance is a discretionary decision that must be supported by findings of fact. In this case, the majority of the Commission felt that granting a variance to allow the existing agricultural building to be converted could indeed constitute a grant of a special privilege. The majority of the Commission felt there were other more suitable locations for a winery of the size and scope proposed by the Appellant, and that their decision should not be biased toward the Appellant simply because they chose to construct an agricultural building in 2004 at a particular location.

The variance was in no way necessary to preserve the property owner's enjoyment of substantial property rights. The property owner has a single family home, an agricultural barn, and approved (but not installed) vineyard which all constitute substantial property rights. The Planning Commission's action on the variance in no way deprives the property owner of any of those established substantial property rights, nor does it prevent the Appellant from seeking approval of a winery use permit at an alternative location. In addition, wineries are not a matter of right to all properties meeting the minimum requirements set forth by zoning. Wineries require grant of a use permit, which is a discretionary action that requires adoption of specified findings in order to grant approval.

Appeal Ground 3: Grant of the variance will not adversely affect the public health, safety or welfare of the County of Napa.

Staff Response: Granting of the requested variance would result in a winery being placed within an existing building located 464 ft. within the required 600 ft. winery setback. The majority of the Commission found that granting the requested variance could not be supported due to the location of the existing building. The existing building poses no threat to public health or safety. However, in denying the variance, the majority of Commission felt that the general welfare of the County would not be furthered by allowing the winery within the agricultural building, constructed in 2004 with accoutrements designed to support future conversion to a winery, where a winery would not normally be permitted.

Appeal Ground 4: Substantial evidence has not been presented demonstrating that grant of the variance might cause a significant adverse affect on any underlying groundwater basin or area which does not overlay an identified groundwater basin.

Staff Response: As with the three previous appeal grounds, it appears the Appellant is simply rearguing points raised and deliberated at the Commission hearings. The Commission did not deny the variance due to evidence of insufficient groundwater resources. The Commission denied the variance because the majority could not support approval of the winery within the existing structure located within the required winery setback.

Appeal Ground 5: Precedent supports the granting of the Variance request.

Staff Response: Precedent does not dictate granting the Variance. The appellant has submitted a list of winery

projects granted variances. If anything, precedent supports the Commission's denial of the variance. As discussed below, Staff believe none of these other variance approvals create a precedent to support overturning the Commission's action on this proposal.

Revana: This winery was approved within a decades old agricultural service building. Subsequent to approval of this variance, the Winery Definition Ordinance was changed (2004) to allow such structures that predate the Winery Definition Ordinance (1990) to be converted to wineries without need for a variance. The Pavitt's agricultural service building does not qualify for processing under this newer code section because the building was constructed in 2004.

Brown Estate: This winery was approved within a historic structure that not only predates the Winery Definition Ordinance, but pre-dates County zoning all together. Like Revana, if it were being submitted today, it would not require a variance.

James Cole: This winery was approved to occur within a new 4,000 sq. ft. building that was being placed in substantially the same location as an existing 3,300 sq. ft. agricultural service building that had existed for decades. The entire subject property lies within road setbacks from either Silverado Trail or the private road that bisects the site. There was no portion of the site located outside of required setbacks. The Commission approved a variance to allow the new structure to go where a substantially similar decades-old existing structure had been located.

Gemstone Winery: This project is completely obscured from Silverado Trail by existing vegetation. Like Revana, Madrigal and Brown, the building existed prior to 1990. Had this project been proposed 6 months after it was approved, it would not have required a variance due the above mentioned code change for wineries is locating in older buildings. Also, the applicant committed to no visitation or signage.

Paraduxx: The new winery buildings were placed in the same proximity and at a general scale to the structures that had existed on the property for decades. Paraduxx replaced long-standing existing buildings with new buildings upon grant of a winery use permit. The Pavitt proposal seeks approval of a winery within an agricultural building constructed in 2004 which has never been used for agricultural purposes and includes accountments for future conversion to a winery.

Madrigal: This winery was approved within a decades old agricultural service building. Like Brown, this approval predates the code change that now allows wineries within building that existed prior to adoption of the WDO (1990).

Lieff: This winery will be placed in close proximity to a private road. It will not be visible from any location accessible by the general public, nor will it include any design elements to distinguish it as a winery.

CONCLUSION & RECOMMENDATION:

Clearly this is a project that the Commission struggled with as a result of unresolved neighbor issues and a convoluted history surrounding the originally intended purpose of the existing building. From Staff's perspective, the Commission was put in a difficult position having to determine if this single location was appropriate for the winery simply because the structure to house the winery was already there. Had the building's visibility from Silverado Trail been less than what it is, the final Commission vote may have swung to the Appellant's favor. It is apparent from site visits that the structure has a optimum location for maximizing its view from Silverado Trail, and to an extent, from Dunaweal Lane as well. Whether that result was intentional or an off-chance circumstance cannot be determined, but the building's highly visible location clearly concerned Commissioners given that visual impact was the primary purpose behind the development of the 600 ft. winery setback.

From a technical standpoint, the appeal process exists so that aggrieved parties can seek relief in the event that the Commission or other County decision-maker makes a flawed decision. In this case, Staff believe the Commission's action was appropriate and is supported by the public record. Staff also believe that the Appellant has not demonstrated that the Commission abused its discretion. Therefore, Staff recommends that the Board adopt a motion of intent to deny the appeal and uphold the decision of the Planning Commission based on the conclusions in this staff report and information presented in the whole of the public record. Further, the Board

should refer the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal for the Board's consideration at a date determined by the Clerk of the Board.

Should the Board choose instead to grant the appeal overturning the Commission denial, Staff recommends that the Board refer the Use Permit application back to the Planning Commission for consideration, since no decision on the Use Permit was made by the Commission. If the Board desires to approve both the Variance and Use Permit, it is requested that conditions of approval be applied that support the integrity of the winery setback, including but not limited to: limits on signage, visitation, and marketing, and requirements to substantially screen the building's view from Silverado Trail.

SUPPORTING DOCUMENTS

- A . APPELLANT'S SUBMITTAL
- B . APPELLANT'S ATTORNEY'S LETTER WITH ENCLOSURES DATED FEBRUARY, 2009
- C . GRAPHICS
- D . DECEMBER 17, 2008 PLANNING COMMISSION MEETING
- E . PUBLIC COMMENTS AT DECEMBER 17 MEETING
- F . APRIL 2, 2008 PLANNING COMMISSION MEETING
- G . PUBLIC COMMENTS AT APRIL 2 MEETING

CEO Recommendation: Approve

Reviewed By: Helene Franchi