

MAR 04 2015

Agenda Item # 9A



Napa County Farm Bureau, 811 Jefferson Street, Napa, CA 94559

March 4, 2015

Napa County Planning Commission
Chair Heather Phillips and Commissioners

re: Melka Winery Use Permit (P14-00208-UP) and Variance (P14-00209-VAR)

After legal review of this variance application, Napa County Farm Bureau concludes that the staff findings are insufficient to allow the county to legally approve this variance request. (See *Cal. Gov. Code §65906 and Napa County Planning, Building, and Environmental Services Variance Application Information and Procedures, attached.*)

Napa County variance procedures require that:

"A VARIANCE application must be supported by evidence of genuine hardship. Three (3) findings must be made to grant a variance:

1. That there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to other land, buildings and/or use in the same Zone or in the immediate area.
2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner.
3. That the granting of such application will not, under the circumstances of the particular case, adversely effect, the health or safety of persons residing or working in the neighborhood of the property of the applicant, and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood."

The primary problem with the staff report and findings as to the "exceptional or extraordinary circumstances or conditions" is that both the staff report and findings fail to explain how and why the Melka property is different from surrounding properties, by reference to description of the surrounding properties. The leading case on variances, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, involved exactly this issue. The court held "This language [in the statute] emphasized disparities between properties, not treatment of the subject property's characteristics in the abstract." The court found that "The data contained in the planning commission's report focus almost exclusively on the qualities of the property for which the variance was sought. In the absence of comparative information about surrounding properties, these data lack legal significance." *Id.* at 520.

Neither the findings nor the staff report include any information about surrounding properties that would support a conclusion that the Melka property involves "exceptional or extraordinary circumstances or conditions" that are not shared by other properties in the zone. The only comparative language is a single

reference to the Melka property as "unique," but without any supporting evidence. As a result, the finding is legally inadequate and not supported by substantial evidence.

Additionally, there is no basis in the staff report or findings to conclude that "*Grant of the variance is necessary for the preservation and enjoyment of substantial property rights.*"

First, the finding is not supported by the staff report and thus is unsupported by substantial evidence. The conclusion that any winery would require a variance is unsupported; the report itself does not suggest it would be impossible to locate a winery outside of the WDO setback. In fact, the staff report states that alternate locations outside of the 600' setback are possible. It might be more expensive but the staff report does not support a conclusion that it is impossible.

Second, neither the staff report nor the findings provide any analysis as to why approving the winery project as proposed is necessary to protect substantial property rights. A property owner does not have a property interest in a desired future use of his or her property. Denying the variance here would allow the property to continue in its existing use, and there is no evidence that the applicant will be deprived of property rights by being confined to that existing use.

This is not a situation in which the property is substantially unusable without the grant of a variance. It is not enough that the variance is necessary to make the property more valuable. "*If the property can be put to effective use, consistent with its existing zoning [and nonconforming use grant] without the deviation sought, it is not significant that the variance[] sought would make the applicant's property more valuable, or that [it] would enable him to recover a greater income.*" *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 926.

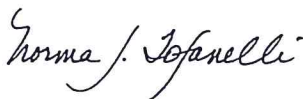
The variance procedure is permitted only in cases of genuine hardship. It is not intended to be used in every case in which a property owner cannot maximize their property value within the existing land use constraints. It is intended to be applied - rarely - to ensure that landowners are not stuck with substantially unusable or seriously under-utilized properties as compared with other properties in the same zone.

A quick review of winery permit approvals reveals that, over the last 5 years, 16 of 35 new winery applications were granted variances to allow encroachment into the required road setbacks.

The WDO setback was carefully crafted to protect agriculture and the rural character of our community. The goal was to prevent a "winery row" along our roadways. The granting of so many variances, which do not meet the legal findings, is responsible for circumventing the WDO and changing the face of Napa County's agricultural lands.

We conclude, after legal review, that the county is unable to make at least two, if not all three, of the required findings. Therefore, the Planning Commission must deny this request for a variance from the WDO setback.

Sincerely,



Norma J. Tofanelli
President

NAPA COUNTY
PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES

VARIANCE APPLICATION INFORMATION AND PROCEDURES

A VARIANCE is a procedure to be considered when the planned construction does not conform to established zoning requirements and where practical difficulties or unnecessary hardship results from the strict application of the standards and provisions of the Napa County Zoning Ordinance. Variances may be sought to such regulations as height and setbacks, but not to increase project density or use limitations.

A VARIANCE application must be supported by evidence of genuine hardship. Three (3) findings must be made to grant a variance:

1. That there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to other land, buildings and/or use in the same Zone or in the immediate area.
2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner.
3. That the granting of such application will not, under the circumstances of the particular case, adversely effect, the health or safety of persons residing or working in the neighborhood of the property of the applicant, and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood.

FOR ADDITIONAL OR DETAILED INFORMATION, WRITE OR CALL THE:

NAPA COUNTY PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES
1195 Third Street, Suite 210
Napa, California 94559
(707) 253-4417

CAL. GOV. CODE § 65906 : California Code - Section 65906

Variations from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits. 65906.5. Notwithstanding Section 65906, a variance may be granted from the parking requirements of a zoning ordinance in order that some or all of the required parking spaces be located offsite, including locations in other local jurisdictions, or that in-lieu fees or facilities be provided instead of the required parking spaces, if both the following conditions are met:

- (a) The variance will be an incentive to, and a benefit for, the nonresidential development.
- (b) The variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.

<http://codes.lp.findlaw.com/cacode/GOV/1/7/d1/4/3/s65906>

Gallina, Charlene

From: McDowell, John
Sent: Wednesday, March 04, 2015 8:13 AM
To: Sharma, Shaveta; Frost, Melissa
Cc: Anderson, Laura; Morrison, David; Gallina, Charlene
Subject: FW: Melka_Napa County Farm Bureau comments
Attachments: NCFB comments_Melka.pdf; NC Variance specs.pdf; Cal.Gov.Code 65906 Variance.pdf

From: Norma Tofanelli [<mailto:keepnvap@sonic.net>]
Sent: Wednesday, March 04, 2015 7:16 AM
To: McDowell, John
Subject: Melka_Napa County Farm Bureau comments

Hi, John -

Please accept the attached comments on the Melka variance from Napa County Farm Bureau.
We will read the letter into the record this morning.

thanks, Norma

CONFIDENTIALITY NOTICE: This email message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and/or exempt from disclosure under applicable law. If you are not the intended recipient of the message, please contact the sender immediately and delete this message and any attachments. Thank you.

MAR 04 2015

Agenda Item #



March 04, 2015

Re: Melka Winery Application, No: P14-00208 and Variance No. P14-00209,
2900 Silverado Trail, St. Helena, CA Assessor's parcel No. 021-352-041

Dear Planning Commission:

I add my concerns for granting a winery permit for this property, as it has residences on three sides, boarded on the fourth by Silverado Trail, thus a production facility in a residential area.

It has only one and one-half acres of vineyard, the rest of the grapes would have to be trucked in. A winery, having to truck in most of its' grapes, an truck out its' waste water, forever, would impact traffic, roads, water, and air quality, forever.

In addition I have concerns with regard to water use for this project. One well has been studied.

The neighbor's residence and the applicants' barn use the same well, the "shared well."

In the "Revised Exhibit B: Conditions of approval states: "c. conversion of an existing 2,309 square foot barn to winery uses."

Has the "shared," well been studied? What part of the 'shared wells' water would be used for the winery and/or other projects?

If you go forward with this project, this is the perfect time to re: #13, "**Wells**, (under the Environmental Health-Specific Conditions, in the document) to have the "shared well" tested, to have both wells installed with a monitoring device, and to institute a fee process, that would go toward consistent monitoring by a Napa County Compliance officer. This is a reasonable action to employ with any new project, especially important in this drought.

I also, I have concerns about the "8 foot high dirt berm with tall trees," that the applicant stated was their intended screening along Silverado Trail.

Does this "fit in," with the natural topography?

Establishing "tall trees,' would require lots of water. The landscaping requirements for screening this project, would require of necessity, watering. Even if there is an efficient watering system in place, it is still using water.

And on the variance "(0) A Variance to allow the 2, 675 square foot production building to encroach 435 feet into the required 600 foot setback from Silverado Trail." That would mean that the building would be 165 feet from Silverado Trail.

Where would the '8 foot tall berm with tall trees on top' go?

I respectfully ask you to deny this project and the variance.

Doreen Leighton,
1166 Loma Vista Dr., Napa, CA