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Recommended Findings

**ZONING ADMINISTRATOR HEARING – SEPTEMBER 22, 2021
RECOMMENDED FINDINGS**

**Amizetta Winery - Small Winery Exemption Use Permit, Exception to the Road & Street
Standards, and Variance
Application Numbers P19-00132-UP and P21-00221-VAR
1089 Greenfield Road, St. Helena
APN 025-390-010**

ENVIRONMENTAL:

The Zoning Administrator has received and reviewed the proposed Categorical Exemption pursuant to the provisions of the California Environmental Quality Act (CEQA) and of Napa County's Local Procedures for Implementing CEQA, and finds that:

1. The project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B, under Class 3: New Construction or Conversion of Small Structures, #10 Construction and operation of small wineries.
2. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.
3. The Secretary of the Commission is the custodian of the records of the proceedings on which this decision is based. The records are located at the Napa County Planning, Building & Environmental Services Department, 1195 Third Street, Second Floor, Napa, California.

VARIANCE:

The Commission has reviewed the variance request in accordance with the requirements of the Napa County Code §18.124.060 and makes the following findings:

4. That the procedural requirements set forth in Chapter 18.128.060 have been met.

Analysis: An application and required processing fees has been submitted for a variance accompanied with a statement from the applicant outlining the reasons for the request. Site plans depicting the location of the project and elevation drawings showing the appearance of the proposed winery have also been submitted. Noticing and public hearing requirements have been met.

5. Special circumstances exist applicable to the 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.

Analysis: A Variance is requested for the proposed hospitality building which is within the required 300-foot winery setback from the shared access drive, which provides access to the adjacent property to the east. Strict application of the required setback would result in

development of the proposed building on steep slopes in excess of 30 percent. Development on slopes greater than 30 percent requires a Use Permit Exception to the Conservation Regulations pursuant to County Code Section 18.108.040. In addition, meeting the setback presents a practical difficulty and could result in detrimental environmental impacts associated with soil loss and related impacts to water quality.

The subject property has special circumstances unique to it that are not shared by other properties in the vicinity, and that make requiring a setback inconsistent with the aesthetics the 300-foot setback is intended to protect. Napa County Code Section 18.104.230 requires a 300-foot setback from the shared access road. This setback requirement was adopted in 1990 with the intent and purpose to protect views of the traveling public along County roads. The existing winery building, which was constructed prior to the 300-foot setback requirement, and proposed development area on the subject parcel lie within the roadway setback. Except for the existing development area, the parcel is characterized by steep slopes, and riparian vegetation. An unnamed blue-line stream runs through the southwest portion of the property and an ephemeral drainage runs along the western boundary of the site. It is not physically possible, therefore, to develop the proposed improvements outside of the 300-foot setback from the centerline of shared access drive without significant earthmoving on steep hillsides. Other Napa County wineries, including ZD Winery and Sawyer Winery, have been granted Variances from the regulation allowing for development within the setback that is no closer to the centerline than the existing development (Per Napa County Code Section 18.104.230.B). The proposed winery would only be visible by visitors of the winery and guests of the residence on the adjoining property to the east, which is under the same ownership as the winery. The development area is far removed from view of Greenfield Road. Other properties located within vicinity of the winery are not encumbered by a shared driveway. The proposed development location is entirely within the sole existing development footprint as well as the historic development area that pre-dates the WDO. As referenced above, several properties in the County under similar or identical zoning classification enjoy permitted wineries (and subsequent expansions) within the setback. These wineries include ZD, LMR Rutherford, Cakebread, Madrigal, and Gandona. Thus, in addition to avoiding severe hardship to the applicant, approval of the requested variance would allow the applicant to achieve parity with other properties.

6. Grant of the variance is necessary for the preservation and enjoyment of substantial property rights.

Analysis: This finding requires the applicant to demonstrate that grant of the variance is necessary for the preservation and enjoyment of substantial property rights generally enjoyed by other property in the same zone and vicinity, but would be denied to the applicant's parcel due to special circumstances of the property and unnecessary hardship. This is generally referred to as the "parity" prong. The property is located within the AW zoning district in which wineries are permitted upon approval of a use permit. Denial of a variance would deprive the applicant of the ability to develop this property for any conforming agricultural processing facility, without excessive grading, construction of a 40-foot retaining wall, soil loss, and water quality impacts. Approval of the variance would allow the subject property to be used as an agricultural use consistent with the site's zoning and General Plan land use designations. Further, the variance to the winery setback would allow the applicants to achieve a degree of parity with other properties within the same zoning district that are currently in agricultural use and are not constrained by the pre-existing conditions described above. Strict application of the setbacks, results in both practical and financial hardships, which would restrict the ability to obtain a winery use permit to expand

the existing facility. Grant of the variance would bring the parcel into “parity” with other properties zoned AW that have been granted use permits and use permit modifications for wineries.

Relocation of the winery outside of the 300-foot road setback would create a substantial hardship in that any alternative location on the 21.5 acre parcel would necessitate the construction retaining walls, approximately 7,000 cubic yards of soil that would need to be removed with up 1200 truck trips required to remove the soil, drainage improvements, and erosion control measures, on steeply sloping lands to the northwest of the proposed development area. The additional construction costs entailed in building the equivalent improvements located outside of the 300-foot roadway setback would likely total more than \$350,000 to \$ 500,000 just for the additional grading and soil removal. The estimated cost does not include the cost of retaining walls, drainage improvements and related infrastructure.

7. Grant of the variance will not adversely affect the public health, safety or welfare of the County of Napa.

Analysis: There is nothing included in the variance proposal that would adversely impact the public health, safety, or welfare of the County of Napa. Construction of the new building would be subject to County Codes and regulations including but not limited to California building codes, fire department requirements, and water and wastewater requirements. The granting of the variance to the winery road setbacks would not adversely affect the health or safety of persons residing or working in the neighborhood of the property. The proposed winery structure and site development would be located outside of the required 35-foot stream setback from the ephemeral drainage. Various County departments have reviewed the Project and commented regarding water, waste water disposal, access, building permits, and fire protection. Conditions are recommended which would incorporate these comments into the project to assure protection of public health, safety, and welfare.

8. Grant of the variance in the case of other groundwater basins, or areas which do not overlay an identified groundwater basin, where grant of the variance cannot satisfy the criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080, substantial evidence has not been presented demonstrating that the grant of the variance might cause a significant adverse effect on any underlying groundwater basin or area which does not overlay an identified groundwater basin.

Analysis: The County requires all Use Permit and Variance applicants to complete necessary water analyses in order to document that sufficient water supplies are available for the proposed project. As set forth in the attached water availability analysis the estimated groundwater demand the estimated groundwater demand of 13.62 AF/YR, represents an increase of 0.03 AF/YR over the existing condition. Compared to the proposed water use, the parcel would recharge approximately 17.13 AF/YR (RCS 2021). The project does not have a significant impact on groundwater resources and this finding can be met.

EXCEPTION TO ROAD AND STREET STANDARDS:

The Zoning Administrator has reviewed the attached described Road and Street Standards Exception request in accordance with Road and Street Standards Section 3 and makes the following findings:

9. The exception will preserve unique features of the natural environment which includes, but is not limited to, steep slopes, heritage oak trees, or other trees of at least 6"dbh and found by the decision-maker to be of significant importance, but does not include man made environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.

Analysis: The road modification request includes selective narrowing of the access road in order to preserve natural features of the environment. At the road stations identified in the request, the access road is flanked by steep slopes on both sides of the road, natural watercourses, and several large mature trees that vary in from six to 24 inches or more in diameter measured at breast height. The driveway in the affected areas has a minimum of width of 10 to 14 feet with clear lines of sight and/or turnouts. These exceptions have been reviewed by the County Engineering Services Division and the Fire Marshal and it has been determined that the requested exception will preserve unique features in the natural environment; thereby recommending approval of this request. The request also includes an alternative design for an emergency vehicle turnaround area. The alternative turnaround area has been shown to be able to support emergency apparatus and has been authorized by the Napa County Fire Department.

10. Grant of the Road and Street Standards Exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

Analysis: The Engineering Division and Cal Fire/Napa County Fire Department have discussed the improvements proposed and determined that their implementation would serve as an alternate method by which adherence to the RSS may be achieved and would provide the same overall practical effect as the RSS towards providing defensible space, preserving the natural environment and protecting the life, safety and welfare of the public.

PLANNING AND ZONING ANALYSIS:

USE PERMIT:

The Zoning Administrator (ZA) has reviewed the use permit request in accordance with the requirements of the Napa County Code §18.124.070 and makes the following findings:

11. The Zoning Administrator has the power to issue a Use Permit under the Zoning Regulations in effect as applied to property.

Analysis: The project is consistent with the Agricultural Watershed (AW) zoning district regulations. A winery (as defined in the Napa County Code Section 18.08.640) and uses in connection with a winery (refer to Napa County Code Section 18.20.030) are permitted in the AW District with an approved use permit. The project, as conditioned, complies with the Napa County Winery Definition Ordinance (WDO) and all other requirements of the Zoning Code as applicable.

12. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the Napa County Code (zoning regulations) have been met.

Analysis: The Use Permit application has been appropriately filed and notice and public hearing requirements have been met. The hearing notice and intent to adopt a Categorical Exemption were posted on September 11, 2021, and copies were forwarded to property owners within 1,000 feet of the subject parcel, as well as other interested parties. The public comment period ran from September 11, 2021 to September 21, 2021.

13. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

Analysis: Granting the Use Permit for the project, as proposed and conditioned, will not adversely affect the health, safety or welfare of the County. Various County divisions and departments have reviewed the project and commented regarding site access, wastewater disposal, parking, and fire protection. Conditions are recommended which will incorporate these comments into the project to ensure the protection of the public health, safety, and welfare.

14. The proposed use complies with applicable provisions of the Napa County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.

Analysis: Compliance with the Zoning Ordinance

The project is consistent with the AW zoning district regulations. A winery (as defined in the Napa County Code Section 18.08.640) and uses in connection with a winery (refer to Napa County Code Section 18.20.030) are permitted in the AW District subject to an approved use permit. The proposed project will comply with the development standards of the AW District. The project, as conditioned, complies with the Napa County Winery Definition Ordinance (WDO) and all other requirements of the Zoning Code as applicable.

Analysis: Compliance with the General Plan

As proposed and as conditioned, the requested Use Permit is consistent with the overall goals and objectives of the General Plan (2008). The General Plan land use designation for the subject parcel is Agriculture Watershed and Open Space (AWOS).

General Plan Agricultural Preservation and Land Use Goal AG/LU-1 guides the County to “preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.” General Plan Goal AG/LU-3 states that the County should “support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands.” Goal AG/LU-3 and Policy AG/LU-2 recognize wineries as agricultural uses.

The approved use of the property for fermenting and processing of grape juice into wine supports the economic viability of agriculture within the County, consistent with Goal AG/LU-3 and Policy AG/LU-4 (“The County will reserve agricultural lands for agricultural use including land used for grazing and watershed/open space...”). By allowing the expansion of the existing agricultural use, the requested Use Permit supports the economic viability of both the vineyard and agricultural product processing uses on the property, consistent with Economic Development Goal E-1 and Policy E-1.

The “Right to Farm” is recognized throughout the General Plan and is specifically called out in Policy AG/LU-15 and in the County Code. “Right to Farm” provisions ensure that agriculture remains the primary land use in Napa County and is not threatened by potentially

competing uses or neighbor complaints. Napa County's adopted General Plan reinforces the County's long-standing commitment to agricultural preservation, urban centered growth, and resource conservation.

Applicable Napa County General Plan goals and policies:

Goal AG/LU-1: Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.

Goal AG/LU-3: Support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands.

Policy AG/LU-2: "Agriculture" is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing.

Policy AG/LU-4: The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/open space, except for those lands which are shown on the Land Use Map as planned for urban development.

Policy AG/LU-8: The County's minimum agricultural parcel sizes shall ensure that agricultural areas can be maintained as economic units.

Policy AG/LU-15: The County affirms and shall protect the right of agricultural operators in designated agricultural areas to commence and continue their agricultural practices (a "right to farm"), even though established urban uses in the general area may foster complaints against those agricultural practices. The "right to farm" shall encompass the processing of agricultural products and other activities inherent in the definition of agriculture provided in Policy AG/LU-2.

Goal CON-10: Conserve, enhance and manage water resources on a sustainable basis to attempt to ensure that sufficient amounts of water will be available for the uses allowed by this General Plan, for the natural environment, and for future generations.

Goal CON-11: Prioritize the use of available groundwater for agricultural and rural residential uses rather than for urbanized areas and ensure that land use decisions recognize the long-term availability and value of water resources in Napa County.

Policy CON-53: The County shall ensure that the intensity and timing of new development are consistent with the capacity of water supplies and protect groundwater and other water supplies by requiring all applicants for discretionary projects to demonstrate the availability of an adequate water supply prior to approval. Depending on the site location and the specific circumstances, adequate demonstration of availability may include evidence or calculation of groundwater availability via an appropriate hydrogeologic analysis or may be satisfied by compliance with County Code "fair-share" provisions or applicable State law. In some areas, evidence may be provided through

coordination with applicable municipalities and public and private water purveyors to verify water supply sufficiency.

Policy CON-55: The County shall consider existing water uses during the review of new water uses associated with discretionary projects, and where hydrogeologic studies have shown that the new water uses will cause significant adverse well interference or substantial reductions in groundwater discharge to surface waters that would alter critical flows to sustain riparian habitat and fisheries or exacerbate conditions of overdraft, the County shall curtail those new or expanded water uses.

Policy CON-60.5 All aspects of landscaping from the selection of plants to soil preparation and the installation of irrigation systems should be designed to reduce water demand, retain runoff, decrease flooding, and recharge groundwater.

Policy CON-72: The County shall seek to reduce the energy impacts from new buildings by applying Title 24 energy standards as required by law and providing information to the public and builders on available energy conservation techniques, products, and methods available to exceed those standards by 15 percent or more.

Policy CON-77: All new discretionary projects shall be evaluated to determine potential significant project-specific air quality impacts and shall be required to incorporate appropriate design, construction, and operational features to reduce emissions of criteria pollutants regulated by the state and federal governments below the applicable significance standard(s) or implement alternate and equally effective mitigation strategies consistent with BAAQMD's air quality improvement programs to reduce emissions. In addition to these policies, the County's land use policies discourage scattered development which contributes to continued dependence on the private automobile as the only means of convenient transportation. The County's land use policies also contribute to efforts to reduce air pollution.

Policy CON-81: The County shall require dust control measures to be applied to construction projects consistent with measures recommended for use by the BAAQMD [Bay Area Air Quality Management District].

Goal E-1: Maintain and enhance the economic viability of agriculture.

Policy E-1: The County's economic development will focus on ensuring the continued viability of agriculture in Napa County.

Policy SAF-20: All new development shall comply with established fire safety standards. Design plans shall be referred to the appropriate fire agency for comment as to:

- 1) Adequacy of water supply.
- 2) Site design for fire department access in and around structures.
- 3) Ability for a safe and efficient fire department response.
- 4) Traffic flow and ingress/egress for residents and emergency vehicles.
- 5) Site-specific built-in fire protection.

6) Potential impacts to emergency services and fire department response.

15. That the proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Analysis: The project is consistent with General Plan Conservation Policies CON-53 and CON-55, which require that applicants, who are seeking discretionary land use approvals, prove that adequate water supplies are available to serve the proposed use without causing significant negative impacts to shared groundwater resources.

The project is categorized as “all other areas” based upon current County Water Availability Analysis (WAA) policies and therefore water use criteria is parcel specific. An analysis was completed by RCS, dated March 29, 2021, which included existing and proposed groundwater demands and a parcel specific recharge evaluation. The project water demands and recharge area also includes a neighboring property under the same ownership as the winery parcel as the water supply is shared by both properties. The WAA indicates that existing groundwater demand is 13.59 AF/YR (1.55 AF/YR for the residences and pool, 0.59 AF/YR for the winery, 0.45 AF/YR for landscaping, and 11.00 AF/YR for vineyard irrigation). Proposed groundwater demand would be 13.62 AF/YR, an increase of 0.03 AF/YR, based on the proposed project. The WAA notes that actual groundwater demands for vineyard irrigation are approximately 1.10 AF/YR due the implementation of dry farming techniques. According to the recharge evaluation, groundwater recharge within the project recharge area is estimated to be 17.13 AF/YR.

The WAA also evaluated the possible effects of a prolonged drought, defined in the WAA as six consecutive years of continuous drought. According to the report, to meet six consecutive years of groundwater demand for the proposed subject property, a total onsite groundwater extraction of 81.72 AF is estimated to be required (13.62 AF/yr of groundwater demand multiplied by 6 years = 81.72 AF). Assuming groundwater recharge is reduced to 32% of the average annual recharge during each year of such a theoretical “prolonged drought period”, then the resulting total of groundwater recharge that might occur during the six-year drought period for the subject property is calculated as follows: As shown in the report, a conservative estimate of the average annual groundwater recharge on the subject property is estimated to be 17.13 AF/yr. Taking 32% of this annual volume yields a drought period recharge volume of 5.48 AF/yr. Assuming a drought period duration of 6 continuous years, then a total of 32.88 AF (5.48 AF/yr times 6 years) of water would be available to recharge the volcanic rocks beneath the property by virtue of deep percolation of the direct rainfall that occurs solely within the boundaries of the subject property

Conservative estimates of recharge that may occur during a “prolonged drought” show that, over a theoretical six-year period of continuous drought in which only 32% of the average annual rainfall might occur, a total of 32.88 AF of rainfall recharge is estimated to occur strictly within the boundaries of the subject property. This theoretical drought period recharge estimate of 32.88 AF is less than the estimated groundwater demand of the proposed project of 81.72 AF for the same continuous six-year period assuming no dry farming). Hence, the theoretical six-year long drought period groundwater recharge “deficit” of about 48.84 AF would represent about 30% of the volume of groundwater currently in storage (estimated to be approximately 165.53 AF). Rainfall recharge during years of average and above average rainfall would then replenish groundwater in storage that has been used to the meet the groundwater demand of the entire property during a theoretical drought of six continuous years.

Groundwater recharge during a prolonged drought period (5.48 AF/YR) is less than projected water demands without dry farming (13.62 AF/YR). However, the implementation of dry farming would reduce water demand by 9.9 AF/YR resulting in an estimated water demand of approximately 3.72 AF/YR.