

PROPOSAL REGARDING VARIANCES

While variances have been controversial of late, I have not heard any proposals for the elimination of variances as discussed in Mr. Graves' letter dated June 5th. However, the letter to the Planning Commission and Board of Supervisors dated March 3rd from the presidents of NV Grapegrowers, the NV Vintners and the Winegrowers of Napa County proposed "strict oversight of existing procedures, paired with fewer creative solutions to non-conforming parcels". Many in the community have also advocated for a stricter interpretation of the requirements for the granting of a variance. But the main thrust from the public is certainly not to ask for the *elimination* of variances.

The contention by Chair Hall that variances are being used by the public as a way to stop winery permits is, in my opinion, inaccurate. This is similar to a comment made by Planning Commissioner Pope during the Melka Winery use permit hearing that variances are being "weaponized". I submit that the contrary is the issue: the bar for granting variances has been set too low thus allowing for winery development on parcels or areas of parcels that are not suited to that development.

During the discussion at the Planning Commission meeting on March 4th, a continuance regarding the Melka application, Deputy Director McDowell admitted that the Melkas would enjoy "substantial property rights" without the variance to allow for a 435 ft. encroachment into the 600 ft. setback. He also stated that the denial of the use permit was "not a potential taking" and informed the Commission that the granting of this variance was at their discretion. In defending the department's recommendation to approve the use permit, Mr. McDowell stated the he had "relied heavily on past Planning Commission decisions" (precedence) where variances were granted and on the direction provided him the day he started his job that "wineries belong" on properties of 10 or more acres. Mr. McDowell goes on to state that "we've defined wineries as an agricultural land use and an **absolute necessity** (my emphasis)" for processing grape juice. The video of this exchange during the March 4th meeting is available on the County's website. This part of the discussion takes place between 1:12 and 1:20 and I recommend that you take the time to review this portion of the hearing, if not all of the discussion regarding the Melka use permit.

In listening to this exchange, the tenor of the comments seems to betray an attitude of advocacy for applicants on the part of the Planning Department based on the conviction that wineries "belong" on parcels of 10 acres or more. This attitude has most likely been cultivated by a series of decisions by elected and appointed officials over time. My assertion is that owners of parcels at or above the minimum size for a winery **have the right to apply** for a use permit, but a winery may or may not **belong** on that parcel. As aptly stated by APAC member Cio Perez at the last meeting, if a parcel requires a substantial variance in order to avoid the flood plain, destruction of oak woodlands or other sensitive areas, perhaps that parcel is not suitable for a winery. Is agriculture in Napa preserved by building wineries on parcels that do not truly meet all applicable standards? Napa needs enough winery capacity to process the fruit grown on its planted land, but no single winery permit can be justified under the blanket statement that "wineries are an absolute necessity" (Mr. McDowell's words). In fact, the original WDO from 1990 states that "the preservation of agricultural land requires a **reliable market** to justify the investment required to acquire, develop and maintain vineyards....." With 400+ wineries existing in

Napa and over 50+ applications for new and expanded wineries in the pipeline, a denial of the Melka winery use permit for 10,000 gallons would hardly constitute a threat to a reliable market for grapes and thus, agriculture.

Road and conservation regulation exceptions comprise another facet of the application process that requires increased attention. Road exceptions, in particular, may have a significant effect on public health and safety and should be treated with greater scrutiny by the Planning Commission. It is my understanding that current County policy allows the Planning Commission the discretion to overrule the Engineering Department and Fire Department when they have NOT recommended the granting of a road exception.

PROPOSAL: The Planning Department, the Planning Commission and the Board of Supervisors of Napa County shall *strictly* adhere to the County Code which states: “A variance can only be granted if the following Findings can be met”.

Under this heading are seven Findings that can be found on page 10 of the June 8th staff report. County counsel verified at the June 8th APAC meeting that ALL seven Findings must be met under the code.

On the list of Findings, # 3 states that the “grant of the variance is necessary for the preservation and enjoyment of substantial property rights”. Deputy Director McDowell clearly states on the record at the Melka hearing that this condition was NOT met. Yet, the Planning Commission approved the Melka use permit by a vote of 4 to 1 and the Board denied the appeal of that approval by a 2 to 2 vote. Napa County Code as cited in the staff report of June 8th makes no mention of precedence or the discretion of the Planning Commission as factors in the granting of a variance.

Variations, road exceptions and conservation regulation exceptions are appropriate planning tools but should not be used to make a winery ‘fit’ on a parcel.

PROPOSAL REGARDING TEMPORARY EVENTS

From Resolution No. 2010-48 – WDO Interpretive Resolution, May 2010:

Since adoption of the WDO in 1990, Napa County code has allowed activities for education and development of customers and potential customers at wineries under the definition of "marketing of wine".

Cultural and social events unrelated to education and development are explicitly not permitted while cultural and social events that are directly related to education and development have always been allowed.

Business events are similar to cultural and social events. They are only permitted as "marketing of wine" if directly related to the education and development of customers and potential customers and part of an approved marketing plan that is, in its totality, clearly incidental, related subordinate to the primary operation of the winery as a production facility.

Under no circumstances may winery facilities be rented out to third parties as venues for parties, meetings, or events the way restaurants or hotels might rent out their banquet halls or meeting rooms.

The above parameters are used for new or modified winery use permits as well as for compliance/code enforcement actions. Unfortunately, Temporary Event standards have no such connection to the WDO definition of winery marketing activities. The long list of types of possible temporary events was presented to the APAC members on page 12 of the June 8th staff report. Temporary events can be festivals, fairs, concerts, dances, parades, athletic events, etc. Some of these events are identical to those that might be held in a restaurant, hotel, movie theater or entertainment venue - and are not consistent with the definition, guidelines, or intent of the Board in either the original WDO of 1990 or the reinterpretation of 2010.

PROPOSAL: To use the definition of Marketing of Wine in the WDO as a guideline for approval of all Temporary Events that take place at wineries or vineyards in AP or AW zones. It would apply to all Temporary Events held at wineries whether or not the event requires a license (not all temporary events require a license).

Many Temporary Event categories allow multiple events per year. This may be inappropriate if applied to such events at wineries, depending on circumstances. The temporary event or the granting of a temporary event license to a winery shall consider the size of the winery, winery location and proximity to neighbors such that the use with or without license may be limited in numbers of guests, hours of use and number of times such use or license may be employed over time. The existing Temporary Event categories 1 – 4 currently allow multiple events per year. These multiple uses per year may be inappropriate if applied to such events at wineries. Cumulative effects of temporary event licenses shall also be considered such that multiple events are not overlapping on the same

night in the same area or that neighbors are not subject to special events on successive days/weekends by a number of different wineries.

In addition, include notification requirements for all events that are 100 or more attendees, are held after normal business hours and are held outdoors with amplified music or lighting. Require notification of all neighbors within 1/2 mile .

Respectfully submitted,

Ginna Behary