

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF NAPA**

In the Matter of:

An Appeal by Charles Meibeyer, Attorney for  
Appellants Shane and Suzanne Pavitt to the  
Conservation, Development and Planning  
Commission's Decision to Deny Variance  
Request No. P06-01427 VAR and Use Permit  
Request No. P06-01426 UP to: (A) approve a  
variance to allow an existing 3,915 square foot,  
two story agricultural structure to be used as a  
winery to encroach 464 feet into the required  
winery setback of 600 feet from the centerline of  
Silverado Trail; and (B) approve a use permit for  
a 10,000 gallon per year winery in the  
agricultural structure under specified conditions.  
The project is located on a 22.84-acre parcel on  
the east side of Silverado Trail, approximately  
600 feet north of its intersection from Dunaweal  
Lane, and located at 4640 Silverado Trail,  
Calistoga, within the Agricultural Watershed  
(AW) Zoning District, APN 020-350-026.

**RESOLUTION NO. 09-40**

**FINDINGS OF FACT AND  
DECISION ON APPEAL**

WHEREAS, on November 1, 2006, Shane and Suzanne Pavitt (collectively Appellant) applied to the Conservation, Development and Planning Department (the Planning Department) for approval of: (A) Variance No. P06-01427 VAR to allow an existing 3,915 square foot, two story agricultural structure (Ag Structure) to be used as a winery to encroach 464 feet into the required winery setback of 600 feet from the centerline of Silverado Trail; and (B) Use Permit Request No. P06-01426 UP to include the following: (1) use of the existing 3,915 square foot agricultural structure for the winery operations and activities, an administrative office and a 164 square foot laboratory, (2) new construction of a 170 square foot outdoor crush pad, (3) installation/completion of a new winery waste water system, a pretreatment with drip irrigation in the vineyard and 3 tanks totaling 30,000 gallons, (4) mobile bottling, (5) four parking spaces; (6) one full time and 2 part time employees, (7) tours and tasting by appointment only (Monday-Friday from 7 a.m.-5 p.m.) with a maximum of 10 visitors per week, (8) a marketing plan to include 8 private wine and food tastings for the wine trade with a maximum 10 people per event and one private Harvest event with a maximum of 30 guests (collectively the Project). The Project is

located on a 22.84-acre parcel on the east side of Silverado Trail, approximately 600 feet north of its intersection from Dunaweal Lane, and located at 4640 Silverado Trail, Calistoga, APN 020-350-026 (the Property);

WHEREAS, the Property is zoned Agricultural Watershed (AW) and designated Agriculture, Watershed and Open Space (AWOS) under the County's General Plan;

WHEREAS, after a preliminary review of the Project, the Planning Department determined that the proposed Project qualified for a CEQA Class 3 Categorical Exemption pursuant to Section 15303, Class 3 ("New Construction or Conversion of Small Structures") of the California Environmental Quality Act Guidelines; and appendix B, Class 3 ("New Construction or Conversion of Small Structures Item #10: Small Wineries") of the Napa County Local Procedures for Implementing the California Environmental Quality Act. The Project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5;

WHEREAS, on April 2, 2008, at a duly noticed public hearing, the Conservation, Development and Planning Commission (the Planning Commission) received and reviewed the staff report and other documentary evidence and took testimony on the Project application. Staff recommended denial of the variance, and requested Appellant propose alternative sites on the Property for a winery location;

WHEREAS, at that public hearing neighbors voiced concerns with respect to both the Variance and Use Permit requests, among those being: (1) the Ag Structure had been built as winery without benefit of obtaining a use permit entitlement first, (2) the proposed location of the winery was not appropriate, (3) the proposed winery would create a source of unacceptable noise, and (4) the application materials provided by Appellant contained misrepresentations of fact;

WHEREAS, Appellant and Appellant's representatives testified that there was no other location on the Property outside of the 600 foot winery setback suitable for a winery structure, in that alternative locations would involve grading on steep slopes and would be detrimental to the existing natural habitat. Appellant further noted the proposed Project is a land use allowed by County Code and consistent with the County's General Plan;

WHEREAS, 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 support approval of the Variance. The majority of the Planning Commission reasoned that the existing Ag Structure was a suitable location for a small winery given the physical constraints of the Property, and directed Appellant to try and reach an accommodation with neighbors over their concerns, particularly with relation to possible noise issues;

WHEREAS, on December 17, 2008, at a duly noticed public hearing the matter was brought back before the Planning Commission for their further consideration. Staff presented findings supporting the issuance of the Variance, and conditions associated with the Use Permit request. Appellants had submitted a noise assessment report but had been unsuccessful in reaching any accommodations with the neighbors. Testimony from neighbors again focused on: (1) the inaccuracies of Appellant's version of events surrounding construction of the Ag Structure and the resultant need for a variance, (2) the necessary findings for the issuance of the Variance could not be met, and (3) concern that granting the Variance would set a precedent for future variance requests for other similarly constrained properties along the Silverado Trail;

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

WHEREAS, at the conclusion of the public hearing, the Planning Commission, having considered the administrative record and oral testimony presented, and in reliance upon the entire record, voted 3-2 to deny the requested Variance. With this denial, the Planning Commission did not address the requested Use Permit, as its approval was, now a moot issue;

WHEREAS, the Planning Commission's decision was based upon the following determinations: (1) the proposed location of the winery in the Ag Structure was not appropriate within the setback, and alternative locations existed on the Property where the winery could be located, (2) the necessary findings for the issuance of the Variance set forth in County Code section 18.128.060 could not be made, and (3) concern that granting the Variance would set a precedent for future requests by other property owners facing similar physical constraints;

WHEREAS, on January 2, 2009, the Planning Commission's denial of the Project was appealed in a timely manner by Charles Meibeyer, attorney for Appellant, in accordance with the procedures set forth in Napa County Code Chapter 2.88 (the Appeal). The Appeal grounds are generally set forth in Sections 3 through 7 of the Recitals, *infra*;<sup>1</sup>

WHEREAS, in accordance with Napa County Code Section 2.88.080 (A), a hearing on the Appeal was scheduled before the Board of Supervisors (the

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<sup>1</sup> The full text of the Appeal is contained in the appeal packet filed with the Clerk of the Board on January 2, 2009.

Board) for March 17, 2009, a date at least fifteen but no more than ninety days from the date of submittal of the Appeal;

WHEREAS, on March 17, 2009, at a duly noticed public hearing, the Board first determined, in accordance with County Code Section 2.88.090, to hear the Appeal based only on the administrative record and found no good cause existed to allow the introduction of additional evidence as requested by Appellant and other interested parties;

WHEREAS, after hearing arguments on the administrative record made by Appellant and other interested parties, the Board closed the public hearing and having duly considered the administrative record 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 a Class 3 Categorical Exemption under State CEQA Guideline 14 CCR 15303 and issue the Variance; and (3) remand the application for Use Permit Request No. P06-01426 UP back to the Planning Commission for consideration and decision;

WHEREAS, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on April 14, 2009;

WHEREAS, on April 14, 2009, a proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on April 14, 2009, and interested persons having been given an opportunity to address the Board regarding the proposed resolution;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors finds, determines, concludes and decides as follows:

**Section 1. Recitals.**

The Board hereby finds and determines that the foregoing recitals are true and correct.

**Section 2. Conduct of Appeal.**

The Board finds that the Appeal should be heard only on the basis of the administrative record and argument thereon, in accordance with County Code Section 2.88.090(B). The Board finds no good cause exists for permitting the

introduction of additional evidence, as was requested by Appellant and other interested parties.

### **Section 3. First Ground of Appeal.**

**A. Appellant's Position:** Appellant contends that 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 the Property of privileges enjoyed by other property in the vicinity and under identical zoning classification. A combination of multiple factors creates the special circumstances applicable to the Property to create the need for the Variance.

**B. Findings and Decision:** The Board finds that variances are discretionary and not a property right. In this case, a combination of special circumstances applicable to the Property justify granting the Variance. The buildable area of Property is mostly developed with a residence, 2 wells, driveway with entry gate, landscaping, domestic and process waste water systems with leach field, the Ag Structure, parking area, and 1.8 acre vineyard. There is a Williamson Contract associated with the Property.

The portion of the parcel not developed is steeply sloped (in excess of 20%) and heavily vegetated. The required 600 foot winery setback from the Silverado Trail demarcation is located principally at slopes exceeding 30%. There is only one buildable location outside the 600 foot setback where the slopes do not exceed 30%, but that location has a small building footprint and is located at the base of two steep slopes and would encroach upon a seasonal watercourse. Any possible development at that location would require substantial construction on slopes exceeding 30%, which would require an exception to the Conservation Regulations and would substantially impair conservation values in the area.

The request for the Variance is to use the existing Ag Structure as the new winery structure. The Ag Structure is located approximately 90 feet from the property line and 136 feet from the centerline of Silverado Trail. By using the Ag Structure, minimal new earth disturbing activities would be necessary, and no vineyard block or natural habitat would need to be removed. Sufficient screening of views of the Ag Structure from Silverado Trail can be achieved through the imposition of appropriate use permit conditions. Taken as a whole, the physical constraints of the Property constitute special circumstances justifying the issuance of the Variance.

For the foregoing reasons only, the Board grants the first ground of appeal and reverses the Planning Commission's decision.

### **Section 4. Second Ground of Appeal.**

**A. Appellant's Position:** The granting of the Variance is necessary for the preservation and enjoyment of substantial property rights.

**B. Findings and Decision:** The issuance of a variance is a discretionary decision, not a property right. Requests for variances are analyzed on the basis of objective factors attributable to each specific parcel. It is within the discretion, first of the Planning Commission, and on appeal, the Board of Supervisors, to decide if the factors peculiar to a particular parcel merit a variance or not.

The Board finds that the parcel is located within the Agricultural Watershed (AW) zoning district. Wineries and uses accessory to a winery are allowed uses in the AW district, subject to the approval of a conditional use permit. As discussed above, a variance approval from the required 600 foot public roadway setback from Silverado Trail is necessary to allow the Ag Structure to be used as the new winery building. The operation of legally constructed agricultural production facilities within the County's agricultural zoning districts is considered a substantial property right.

For the foregoing reasons, the Board grants the second ground of appeal and reverses the Planning Commission's decision.

#### **Section 5. Third Ground of Appeal.**

**A. Appellant's Position:** The granting of the Variance will not adversely affect the public health, safety or welfare of the County of Napa.

**B. Findings and Decision:** Various County departments have reviewed the Project and commented on appropriate water, waste water disposal, access, building permits, and fire protection conditions that should attach to the Project. The recommended conditions will ensure compliance with all applicable regulations.

Grant of the Variance is conditioned upon Appellant incorporating into the Project the comments of the departments and provision of adequate screening of the winery operations from Silverado Trail. Incorporation of these conditions will provide sufficient safeguards so that there will be no adverse affect on the public health, safety and welfare.

For the foregoing reasons, the Board grants the third ground of appeal and reverses the Planning Commission's decision.

#### **Section 6. Fourth Ground of Appeal.**

**A. Appellant's Position:** That, 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 County Code Section 13.15.070 or 13.15.080, 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.

**B. Findings and Decision:** The Board notes that the administrative record contains a Phase 1 Water Availability Analysis that has been reviewed by the Department of Public Works. The analysis concludes that conversion of the Ag Structure into a winery will not result in substantial depletion of groundwater supplies or interfere with groundwater recharge. Specifically, the Property is located in a hillside area, with an extraction threshold of .5 AF/Acre, resulting in a total Property threshold of 11.4 AF/Year. The total estimated water demand of 1.9 AF/Year is below the established threshold for the Property. Therefore, the projected water use for this project should not have a significant impact on static water levels of neighboring wells.

For the foregoing reasons, the Board grants the fourth ground of appeal and reverses the Planning Commission's decision.

#### **Section 7. Fifth Ground of Appeal.**

**A. Appellant's Position:** Appellant contends that precedence supports the granting of the variance.

**B. Findings and Decision:** Each variance request is analyzed on objective factors associated with each individual parcel, and must meet the criteria set forth in County Code Section 18.128.060. The fact that prior variances have been granted for setback requirements does not establish precedent that justifies later requests. Each request is, and must be, analyzed on the objective factors attributable to each specific parcel.

For the foregoing reasons, the Board denies the fifth ground of appeal.

#### **Section 8. Summary of Decision.**

Based on the foregoing facts, findings, and determinations, the Board of Supervisors hereby:

A. Finds that the granting of the requested Variance qualifies for Class 3 Categorical Exemption under the California Environmental Quality Act. 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;

B. Grants the Appeal and finds that Variance Request No. P06-01427 VAR should issue. In accordance with the requirements of County Code Section 18.128.060, the Board makes the following findings relating to the issuance of the Variance:

1. *The requirements set forth in Chapter 18.128 of the Napa County Code have been met.* The Variance application was complete and properly filed.

All noticing and public hearing requirements have been met, as reflected in the administrative record.

2. *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.*

The Board incorporates its Findings and Decision as set forth in Section 3.B herein, and based thereon, makes this finding.

3. *Grant of the Variance is necessary for the preservation and enjoyment of substantial property rights.*

The Board incorporates its Findings and Decision as set forth in Section 4.B herein, and based thereon, makes this finding.

4. *Grant of the Variance will not adversely affect the public health, safety or welfare of the County of Napa.*

The Board incorporates its Findings and Decision as set forth in Section 5.B herein, and based thereon, makes this finding.

5. *That in the case of groundwater basins other than those identified in Section 13.15.010, 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 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.*

The Board incorporates its Findings and Decision as set forth in Section 6.B herein, and based thereon, makes this finding.

C. Remands the application for Use Permit Request No. P06-01426 UP back to the Planning Commission for their consideration and decision.

#### **Section 9. Effective Date.**

This resolution shall take effect in accordance with the provisions of Napa County Code Section 2.88.090.

#### **Section 10. Judicial Challenge.**

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the Board of Supervisors of the County of Napa, State of




California, at a regular meeting of said Board held on the 14th day of April, 2009, by the following vote:

AYES: SUPERVISORS DODD, WAGENKNECHT, and LUCE

NOES: SUPERVISORS CALDWELL AND DILLON

ABSENT: SUPERVISORS NONE

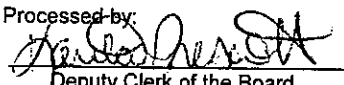
ABSTAIN: SUPERVISORS NONE

  
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MARK LUCE, Chair  
Napa County Board of Supervisors

ATTEST: GLADYS I. COIL  
Clerk of the Board

By: 

<p><b>APPROVED AS TO FORM</b> <b>Office of County Counsel</b></p> <p>By: Robert Paul (by e-signature)</p> <p>Date: April 14, 2009</p>
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<p><b>Approved by the Napa County</b> <b>Board of Supervisors</b></p> <p>Date: April 14, 2009</p> <p>Processed by:  Deputy Clerk of the Board</p>
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