

Napa Valley Planning Commission
Conservation, Development and Planning Department
1195 Third St., Suite 210
Napa, CA 94559

March 24, 2008

Re: Pavitt Family Vineyards – Variance Request #P06-01427-VAR

Dear Commissioners,

I am writing to you regarding the requests for a variance and for a winery permit for the Pavitt Family Vineyards in Calistoga. I live at 4704 Silverado Trail, and share approximately ¼ mile of the Pavitt's northern boundary. I have many areas of concern with this application, and present them as follows:

I: PRECEDENCE

The Napa Valley is a unique and beautiful place. To protect and conserve it, there is a winery ordinance that applies in Napa County. The specified parcel sizes and setbacks help to maintain the character of the valley, yet still allow winery development that conforms to that code. However, under this code, not all parcels in Napa County qualify to have a winery built upon them.

The proposal for the **Pavitt Winery** seeks a variance to allow a setback of 136 feet from Silverado Trail instead of the required 600 feet. Napa's winery code on setbacks refers to state and county roads in general, but only Silverado Trail is referred to by name. The intent of the code clearly seems to focus on the Trail, one of the valley's two major arteries and arguably the most picturesquely "Napa Valley". Without this code it is easy to imagine the Trail becoming a commercial corridor, instead of a scenic one.

Silverado Trail runs at the base of the eastern hills. In many places the hillsides on the eastern side of the road are so steep and close that the Trail was literally carved out of the hills. The Trail marks the boundary of the flatter land to its west, while most of the parcels to the east are sloped, often steeply. This is the case from the Pavitt's property in Calistoga, south as far as Yountville, more than 15 miles.

The Pavitt's stated reason for a variance is their steep slope, but contrary to their claim, this is not unique to their property. If the Pavitt's are granted *any variance* on the setback, a precedent will be set for 15 miles of sloped parcels to be granted the same variance. Consider how many variances, and how many wineries next to the road that could be. Consider that these variances will then be the precedent for variances countywide. Also consider how many wineries have already complied with this code, arguably at increased expense, and the subsequent legal concerns here. This could be the single most important "setback" for county code.

The Pavitts claim, "The granting of this variance is necessary to allow the approval of the Use Permit for the winery, and the preservation and enjoyment of property rights enjoyed by other properties in the AW zoning district." That is not true - they may have other building sites. If

not, remember that not every parcel in Napa County meets the criteria for a winery; they are not entitled to one because other parcels have one. Additionally, the current code was in effect when they decided to purchase this property.

For these reasons, *the requested variance should be denied.*

II: STUDIES

Beyond the issue of granting a variance, any proposal for a winery permit for this parcel should include studies on the impact to traffic and local groundwater.

A.) Dunaweal Lane crosses the valley from Highway 29 to intersect Silverado Trail at the Pavitt property. This crossroad is a truck route and a bypass around Calistoga, and is much busier than other crossroads. A winery entrance near this intersection should be carefully considered. Traffic traveling north on the Trail rounds a curve just before reaching this point, and the entrance to the Pavitt property is hidden. It is also hidden from our driveway, located only a few hundred feet north on the Trail. Several properties share our drive, and winery traffic would be a safety issue for us.

B.) Water is also an important issue in this vicinity. I know of two neighbors without enough water for their vineyards, and another without enough for their house. Initial tests on new wells may indicate sufficient volume, but after a period of pumping this can diminish, and other wells in the area, which may already be marginal, could be impacted.

C.) Page 1, section 1.f., of the Pavitt application supplemental information sheet, indicates the intention to construct caves for storage. This becomes an issue for my property because my well source is uphill from where I understood their caves would be constructed, based upon my conversation with the Pavitt's environmental designer Kurt Larrecou in ~ 2000. In fact, our well and water are contained in the very hill in which they propose to tunnel. Common sense and our geologist suggest this is not a good combination. As my house is also located on this hill, stability is an issue as well.

Napa County Code 18.108.140 seems to apply here and restricts earthmoving activity, grading, or improvement, which, among other things:

- a. May pose a significant safety or public health risk,
- b. May result in a potential water quality impairment
- c. Is located in an area determined to have a severe soil erosion hazard...
- d. Is located in a sensitive domestic water supply drainage

As this is in the Conservation Regulations, *I request that you not permit any excavations of this nature, and that I be included in any related proceedings.*

III: REPRESENTATIONS

A.) In 2002, I sent a letter to the Pavitt's stating my concerns. Mr. Larrecou contacted me by phone. He explicitly told me that the Pavitts were not going to put in caves, and they were not going to build a winery. He even added that, "If the Pavitts were going to build a winery, they already would have done it." At that point in time he was involved in building the "agricultural structure" which the Pavitts now want to use as their winery. In fact, there were winery-specific design details included in the plans of this building.

B.) The original plans for their agricultural building show floor drains consistent with winery design, and inconsistent with other agricultural uses. The large, double, arched copper doors, and matching copper window trim are more consistent with a winery than any other type of building. It appears this structure was intended as a winery from the beginning, an intention which may have not been disclosed to the County.

C.) The current winery application asks to be allowed to "revitalize" this existing building as a winery. This is not some historic "ghost winery" or even, as implied, an old barn. The Pavitts recently completed it, and any implication to the contrary is not correct.

D.) The application also claims approval will allow on-site processing, and so reduce traffic on county roads. The plantable 1-2 acres on the property can't yield more than 1,500 gallons, yet the application is for 10,000 gallons. Those additional grapes have to come from elsewhere, and will have to be transported with a resultant increase in traffic in the area.. Currently, 2005 harvest PhiferPavitt wine is available from phiferpavittwine.com and yet there are no vines planted on their property.

E.) Their application for a setback variance claims "the property that is located outside of the 600 foot setback from the Silverado Trail is very steep terrain..." and includes a report from Albion Surveys that it "would not be buildable." In 2004, they used a similar argument for a variance to allow their overly steep driveway, claiming it was "the only option" to reach "the only building site available on our property". If one looks at their 22-acre property, or a map, or the photo below, it is evident that there remains room near their "agricultural structure" for a home.



Pavitt parcel from north; house at left, "agricultural structure"/ proposed winery at right

IV: MONITORING COMPLIANCE

There have been three red tags to stop work on the Pavitt property. The first was for site work without a permit, and the second citation was for hillside grading without a permit. The third was when a County Public Works crew discovered the Pavitts moving the extensive tailings from their site excavation onto the shoulder of Silverado Trail. This was all along their frontage with the Trail, approximately 500 feet by several feet high, extending maybe 10 feet out, even beyond the telephone poles. They then planted olive trees in it. It's my understanding from the county that Mrs. Pavitt told the county she had a permit, and that she was the contractor. A county representative told me there was no such permit.

Much, but not all of that soil has since been removed, as have the trees. This *encroachment* by the Pavitts occurred last November, just weeks before the scheduled hearing for their winery application, which ironically seeks winery status and a variance for an existing building to *encroach* 464 feet into the prescribed 600 foot winery setback. There seems to be a pattern here.



Silverado Trail and Pavitt's proposed winery March 2008; winery application contains pre-encroachment photos

I understand that the Planning Department is not empowered to punish the landowner for not complying with the law. But by granting permits, the County relies upon the landowner to comply with the restrictions of those permits. The obvious question arises that if the landowner has repeatedly failed to comply with basic codes, why should they be given a special permit to exceed the code? How can there be a reasonable expectation of compliance?

In the December 5th meeting of the Commission, another winery with serious compliance problems was discussed. Independent monitoring had been employed, and was found both by County and neighbors to be inadequate. The neighbors complained both that the County lacked "teeth" for enforcement, and that they as neighbors, were being put in the position of monitoring the winery's compliance.

Given the apparent inaccuracies presented by the Pavitt Winery project, and their history of noncompliance with County codes, I question their compliance with the limitations of a winery use permit. Considering the prior lack of success of independent monitoring of problem wineries in Napa County, that process cannot be relied upon. If the Planning Commission grants the Pavitts this use permit, who will be responsible for overseeing compliance - the neighbors?

Please do not grant a permit which cannot be enforced.



Pavitt home 2008

5: SUMMARY

The Pavitts chose to build on steep terrain for their home, so the same might be done for their winery. But if it is not practical, that is simply the lay of their land. When they chose to buy the property, the winery codes were in effect. They chose to build their “agricultural structure” where they did, and their house where they did. Perhaps they could have reversed the two. The point is they had choices, and it’s not incumbent upon the County to provide everyone with the right to build a winery, nor to rescue landowners from their choices. The Pavitts have no unique, genuine circumstances, which would merit a variance. Do not make an exception; do not grant a variance for them.

There seems to be a tendency, if not a plan, for the Pavitts to mischaracterize their project to the County and to neighbors. I was personally told the Pavitts were not going to put in a winery, even as their eventual winery structure was being built with a winery design. Napa County was told this was just an agricultural structure. It’s now being presented as a convenient old building to convert to a winery. I believe it’s apparent that this was the Pavitt’s intent from the beginning. If a permit is issued, it seems likely this could become another “problem” winery.

Neighbors requested that the original winery hearing date be postponed, and ultimately the Pavitts did, too. On the hearing date we all received notes inviting us to the Pavitt’s to discuss their “family” project. I wrote them a letter declining, which is attached. This is not just a matter of fine-tuning the project’s details to suit the neighbors. More importantly, approval will set a precedent that has major, countywide ramifications.

Please uphold the current winery code, and deny a variance.

Respectfully,

David Clark
4704 Silverado Trail, Calistoga, CA 94515

Shane and Suzanne Pavitt
4660 Silverado Trail
Calistoga, CA 94515

12/20/07

Dear Mr. and Mrs. Pavitt:

Over the Thanksgiving holiday, my wife and I were surprised to receive official notice of a public hearing for your winery application, set for December 5th. We discovered that your application has been in process with the Napa County Planning Department for at least a year, without any neighbor's knowledge.

A personal note from you arrived December 5th, the date set for your hearing with the Planning Commission. In it, you invited us over to talk about your "family wine project". Five years ago I wrote to you, asking to meet with you because of some concerns I had with your development. You didn't respond to my letter, but your developer Kurt did call me then. He assured me you were not going to build a winery, nor would you construct caves. We've never had any other communication from you, ever. Now, contrary to what I was told, you are requesting a winery permit, and in the application you've proposed caves for storage.

After doing some more research, it appears you've made other misrepresentations as well. As we have no reason to believe or trust any communication from you, and many reasons not to, we must decline your offer to meet.

Sincerely,

David Clark

4 December 2007

p 1 of 3

To Chairman Fiddamen and Napa County Planning Commissioners

re: PAVITT FAMILY VINEYARDS
Use Permit and Variance Request

We understand that items #9 & 10, scheduled for hearing on December 5, 2007, have been placed on the consent calendar for continuation and renoticing.

As longtime residents of this area, representing 5 generations farming our own property, we are against this winery project. It is not suitable for the area or the property for which it is proposed - just check the file to see how many variances were required for it to proceed this far.

We object for the following main reasons:

1) Traffic impact:

This is a very dangerous stretch of road - see CHP records for accidents at the intersection of Dunaweal Lane and Silverado Trail, just a few feet away from the entry to this project. Just last week, the area was without power for over 12 hours as a speeding car took out a utility pole and transformer just seconds from the driveway of this proposed winery. Calistoga's mineral water trucks constantly speed through here and turn onto Dunaweal from the Silverado Trail. Large trucks are banned from main street Calistoga and are warned by a sign at Larkmead Lane that they must turn onto Dunaweal and then left onto the Silverado Trail if they are to proceed North. This forces large trucks and trailers hauling goods for Safeway, Raleys, Albertsons, etc. onto this country road. Add in moving vans, freight haulers, bicycles, tourists (a bit tipsy from all that tasting at the 5 wineries within a mile from this site), roller bladers and just plain commuter traffic and you have the potential for more problems, injuries and liabilities.

Additional tours and tastings "by appointment" and special events are just too dangerous in this already over-tasted neighborhood.

2) Water impact:

This neighborhood is one of severe water shortage. Many residents have minimal

wells (1/2 gpm) and at least one resident has had to have water tanked in for the past several years.

The dry conditions in this area are recognized and cited by Environmental Management in several instances. Large amounts of water drawn by a winery requires further study in this area as mandated by the county-wide Master EIR completed in 1990. At that time, the Master EIR recommended that, due to severe lack of water, no more wineries or irrigated vineyards should be allowed in the Calistoga area. How much worse is the situation today?

3) Neighborhood impacts

While the addition of more "special events" with the accompanying noise, lights, loud music and screaming will ruin the neighborhood environment and the private enjoyment of our own properties, one property owner will be most negatively impacted. The existing home on the adjacent property owned by Freed will bear the brunt of this ill-conceived project. This property will lose significant value and the permitting of the Pavitt Winery may represent a "taking" which may demand reimbursement. This home, (which was in situ, before the Pavitts' thoughtlessly constructed this "ag"/winery building), is directly above the "ag"/winery building. All the noise and lights of not only special events but normal winery operations will be magnified and amplified as it reverberates through this house just a few feet away - sound travels upward and amplifies, echoing, as it goes. These people will not be able to live in their own home - they will certainly not be able to "enjoy" it. There is no noise barrier proposed and one is probably not possible in this area.

4) Disguising the construction of the winery building as an "ag" building and then just 3 years after completing it, attempting to get the county to let it be used as a winery is a violation of the California Environmental Quality Act (CEQA). Phased projects MUST be presented in their entirety from the start - NOT piecemealed. This is not discretionary - this is mandatory under CEQA. It is unlikely that the Pavitts innocently built an "ag" barn (which just happens to have an attached crush pad and large floor drains) and then, lo and behold, just woke up one morning, and decided it might make a great winery. The extensive planning files and all the variances granted so far seem pretty clear that the Pavitts may have suspected that a winery building in that location would be in violation of so many county ordinances and regulations that it would not be allowed as built. So it appears that they built it first and now expect the county will be forced to permit it.

For these reasons and more, we respectfully request that this Commission does not let the wool be pulled over its eyes and that it deny this permit request. If the matter is continued, we wish to be advised of any future hearings so that we may comment further.

Thank you for your time and consideration,

Norma J. Tofanelli
1001 Dunaweal Lane, Calistoga 94515 707.942.4641

Pauline Tofanelli
1076 Dunaweal Lane, Calistoga 94515

cc: M. Doyle, Principal Planner
D. Dillon, Supervisor

Supervisor
Mark
Luce
3 pages

PAUL T
FIVE
MAR 28 2009
(MAY)

CLERK SUPERVISOR
COUNTY OF NAPA

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~~H. H. H. H.~~

R. Paul
M. Doyle
J. McDowell
N. Franchi

Supervisor Luce, my name is Robert Freed and I live at 4680 Silverado Trail in Calistoga, adjacent to the Pavitt property. It has been several weeks since you cast the deciding vote to grant their variance. I am writing to you not as a disgruntled neighbor but rather as an individual who strongly believes that you made a very poor, uninformed decision. Please indulge me as I try and explain.

First as a matter of California State law, the statutory standards for granting a variance were not met. The mere fact that you and others believed that the barn was the best possible location for the winery does not meet the required tests. This is a statement of fact supported by both independent legal analysis and your own planning staff (as stated in their staff report on this matter). I would not expect you to be an expert on the legalities of every matter that comes before you, I would however expect you to rely on your staff and county legal counsel so as to avoid making flawed decisions. I am confident that if I chose to pursue this matter in court, the outcome would be clear and the variance would not be granted.

Now let me discuss integrity of process. I am a professional real estate developer. As a developer, if I had claimed that I did not understand the variance and the County should not have let me build my barn with all of the winery infrastructure, and now that I have built my personal residence in what would have been the best location for the winery, oh please, please forgive me. You would have thrown me out of the room. Suzanne Pavitt is a developer, she acted as the general contractor for all the construction work that they have completed to date. The women has a masters degree, please give me a break, this is not an unfortunate situation as stated in the public hearing....you were duped because you applied a double standard. As an aside, when we were in escrow to purchase our home, I did my due diligence and was informed by the County that the barn was approved only for agricultural purposes and

coupled with the set back requirements, I felt confident in the situation. Again, I might suggest that my property will now suffer from a double standard applied in this matter.

Lastly, let me comment on integrity of the Applicant. Approximately two and one half years ago the Pavitt's posted a notice to sell alcohol beverage on their property. I personally called Suzanne and asked her about the notice. She reassured me that they had no development plans and the license was required for her to sell her wine from her house. At the same time she was working with the County for the winery permit.

If you take a step back you might realize that my opposition is not based on a "Nimby" attitude but rather a right way and a wrong way for things to be done.

Thanks for your time,

Robert