

LAW OFFICES OF
MICHAEL W. RUPPRECHT

APR 2 2008
AGENDA ITEM
NO. 28A

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Reply to:

East Bay Office

April 1, 2008

By Facsimile – (707) 253-4336 / Regular Mail

Hillary Gitelman
Director of Conservation, Development & Planning
County of Napa Conservation, Development & Planning Dept.
1195 Third Street, Suite 210
Napa, California 94559

Re: *Pavitt Family Vineyards / Shane & Suzanne Pavitt Trust*
Variance & Use Permit Requests
Request Nos: P06-01427-VAR / P06-01426-UP

Dear Ms. Gitelman:

This office represents Robert and Sharon Freed, owners of the improved real property located at 4680 Silverado Trail, Calistoga, immediately adjacent to the property on which the above-referenced variance and use permit requests are subject. Our clients strongly oppose the variance request and use permit application. The application should be denied for the following reasons:

1. The contention that no one can crush the applicants' grapes is not accurate. Crush Pad in San Francisco would crush 10 barrels of wine.
2. The project violates the County ordinance concerning the minimum setback of 600 feet from Silverado Trail. That ordinance existed at the time the applicants purchased their property and built their house. It was also in existence at the time they built their out-building within the 600-foot setback. The fact that compliance with the ordinance would be difficult or impossible because of the grade of the property is not a reason to allow for a variance. To do so would mean that the ordinance would not apply to any property that has a 20% slope within 600 feet of Silverado Trail. There is no compelling reason to consider a variance in view of the fact that the applicants

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purchased the property, built their home, and constructed the out-building with constructive notice of the ordinance.

3. The visual and auditory intrusion of the winery personnel and the crush pad would significantly devalue our clients' property. Our clients' home existed prior to the home and the out-building constructed by the applicants. The crush pad and the applicants' employees would be within a stone's throw of our clients' deck. This, again, supports the reasoning for the 600-ft. setback required in the ordinance.

4. The Director of Environmental Management should review the water usage in the area where it potentially affects the water supply of nearby wells of adjacent property owners who depend on ground water. At a minimum, there should be data establishing water extraction volumes and subject well levels. Neighboring wells should be assessed at the cost of the applicants. On-site monitoring wells would need to be established to engage potential impacts on ground water resources utilized for the proposed project. The Director of Environmental Management should be aware of the health, safety and welfare of the adjacent property owners as a priority over the request for applicants to run a wine business that, on its face, violates County Ordinance 12202 *et seq.*

5. The winery application should require a biological survey for raptors at least 300 feet from the applicants' property.

6. The applicants have not indicated how they would comply with Regional Water Quality Control Board provisions.

7. The applicants have not supplied any traffic studies submitted that conform to the scope of the applicants' plans for the use of the winery. Parking and traffic will be a serious issue. There should be no off-site parking allowed. However, given the location of the applicants' property and the admission of the applicants of the constraints caused by the grading, there is inadequate parking. This would force visitors to illegally park on Silverado Trail. This area is already dangerous, from a traffic standpoint. Further, as traffic approaches the applicants' property at a high rate of speed, people who are unfamiliar with the location would drive by it and end up going onto our clients' property to make a U-turn. Not only would this be a constant trespass onto our clients' property, it would elevate the probability of traffic fatalities in that area.

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8. Dust control would be an ongoing issue. Given the proposed location of the winery and crush pad, it would be a constant battle for our clients to cause the applicants to control the dust and noise. Simply conditioning an approval does not mean that there will be compliance. Rather, any conditions imposed by the County for a proposed approval would require our clients to become the enforcement officers, as it our clients who would be directly effected by a violation of any of the conditions.

9. Lighting will be an issue. Our clients' bedroom faces the winery area.

10. I also direct the Commission to the letter of the Public Works Director to the applicants on October 15, 2007, sending a Notice of Violation for the applicants doing landscaping without authorization from the County within the County right-of-way of Silverado Trail. As was noted by the Public Works Department, "This has created a potential hazard for vehicular traffic, utility companies working within this area, as well as drainage issues on Silverado Trail. A red tag was placed at the entrance of the above-referenced address on October 2, 2007 as a Notice of Violation."

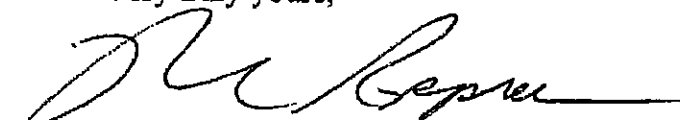
11. The Commission should note in reviewing the applicants' reasons for granting a variance that there is no comment by the applicants as to the detrimental impact to their neighbors. The burden of establishing a hardship is on the applicants. We contend that it is fundamental that the difficulties or hardships of the applicants must be unique to justify the variance. They must be peculiar to the application of zoning restrictions to particular property and not general in character since difficulties or hardships shared by all go to the reasonableness of the zoning restrictions broadly and render them invalid or calls for their modification by a mandatory ordinance. In other words, the plight of these applicants for a variance must be due to peculiar circumstances and conditions, and it must be special or unique in contrast with that of other property owners in the same district. What we have here is a self-induced hardship. The applicants purchased the property with the existing zoning in place and with existing ordinances in place. The applicants chose to build a home and construct an out-building with that knowledge. After making these commitments, either as a pre-conceived plan or as an after thought, the applicants decided to become involved in a commercial winery. By constructing the building where they did, they created a self-induced hardship. Had they constructed their building outside of the 600-ft. setback, they would not be seeking a variance and only a use permit. As it is clear that there are other facilities available to provide crush services for grapes that the applicants apparently are purchasing off site, there is no hardship to the applicants in being denied the variance and the use permit.

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In conclusion, our clients ask that the Commission deny both the variance and the use permit.

Thank you for your attention to this matter.

Very truly yours,



Michael W. Rupprecht

MWR:pcl

cc: Clients (by fax)

[freed\napa planning dept.003]

FRANK COLEMAN

CDPC
MEETING
APR 2 2008
AGENDA ITEM
NO. 8A

April 5, 2002

Shane and Suzanne Pavitt
24 Woodside Way
Ross, CA 94957-0573

Dear Mr. and Mrs. Pavitt:

This letter is in regard to your property in Napa County on the Silverado Trail. My wife and I own the property directly to the north adjoining your property, and we are concerned about recent development activities on your property. Several years ago, I stopped by your property and met a gentleman named Kurt, who was involved in some grading at the time. He explained that there were plans for a new residence, guesthouse, caretaker's residence, olive grove, vineyard and caves to store wine for other persons. Apparently, the grading that Kurt was conducting at that time was to clean up some existing roads on the property.

As of last weekend, additional grading was occurring in the hillside. I checked with the County, and they informed me that no grading permit had been issued for the property. From our property, we can see what appears to be a ridge top building site that has been cleared and graded. We are concerned that work done without required permits may result in significant effects on our property.

We understand that the County regulations allow your property to be developed with residential and agricultural uses. However, we also are aware that there are numerous steps that are required prior to development to ensure that your plans do not adversely impact the environment of our property. Some of those steps require that neighbors be notified so that there is an opportunity to review the project to determine how it will affect their property. We understand that you are in the process of submitting an application to plant ± 7 acres of vineyard to the County. While we can review the plans submitted to the County, it would be preferable if you would share with us and possibly your other neighbors these and your future plans.

We are also very concerned about the possibility that cave construction could create stability problems or other geologic impacts to our property, or adversely affect our well. The location that Kurt pointed out as a possible cave location is very close to our property line. Even though they are underground, caves are not allowed to cross a property line without the property owner's consent. In addition, it is my understanding that commercial wine storage is not permitted in the agricultural areas of the county, and it would be a violation of the County Code and possibly the State Alcoholic Beverage regulations to conduct such an activity. Of course, you may not be intending caves, or the intended location of caves may be different than what I surmise. If either

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is the case, many of my concerns will be alleviated. May I suggest that we meet onsite for the purpose of better understanding your plans?

In closing, we reiterate that this letter is not intended to tell you what to do with your property, but rather a request to keep us informed of your intentions and to obtain all required permits before continuing development activities that could irreparably damage your or our property. Please contact me at P.O. Box 92, St. Helena, California 94574 or call me at 963 0239.

Sincerely,

David Clark

D. Clark

18.128.010

Chapter 18.128

VARIANCES

CDPC
MEETING

APR 2 2008

AGENDA ITEM
NO. 8A

Sections:

- 18.128.010 Granting.
- 18.128.020 Application.
- 18.128.030 Application—Fee.
- 18.128.040 Application—Public hearing.
- 18.128.050 Conditions.
- 18.128.060 Findings prior to issuance.
- 18.128.070 Approval—Notification of county assessor.
- 18.128.080 Unauthorized use or activity.
- 18.128.090 Revocation.

18.128.010 Granting.

A variance from the terms of the zoning district regulations may be granted by the commission, subject to the provisions of this chapter. (Ord. 511 § 1 (part), 1976: prior code § 12820)

18.128.020 Application.

Application for a variance shall be made in writing on a form prescribed by the commission, and shall be accompanied by plans, elevations and other appropriate information, including graphic depictions necessary to show the grounds for the granting of a variance. (Ord. 511 § 1 (part), 1976: prior code § 12821)

18.128.030 Application—Fee.

An application for a variance shall be accompanied by that fee established by resolution of the board of supervisors. (Ord. 906 § 44, 1989: Ord. 837 § 50, 1987: Ord. 511 § 1 (part), 1976: prior code § 12822)

18.128.040 Application—Public hearing.

The commission shall hold a public hearing on each application for a variance. Notice of the hearing shall be given in accordance with Section 18.136.040. The public hearing shall be conducted in conformity with procedures established by the commission. The applicant shall bear the burden of proof in establishing facts supporting his eligibility for grant of variance. Any party may appear in person or be represented by his attorney or agent. (Ord. 511 § 1 (part), 1976: prior code § 12823)

18.128.050 Conditions.

A. Any variance granted shall be subject to such conditions as shall 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 zoning district in which such property is situated.

B. Any variance granted may be subject to conditions specifically set forth in the variance including, without limitations, conditions governing all the matters set forth in Section 18.124.060 with respect to use permits. (Ord. 511 § 1 (part), 1976: prior code § 12824)

18.128.060 Findings prior to issuance.

A. Before issuing a variance, the commission shall make the following written findings:

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1. That the procedural requirements set forth in this chapter have been met;
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;
3. Grant of the variance is necessary for the preservation and enjoyment of substantial property rights;
4. Grant of the variance will not adversely affect the public health, safety or welfare of the County of Napa.

5. That, in the case of groundwater basins identified as "groundwater deficient areas" under Section 13.15.010, grant of the variance would not require a new water system or improvement, or utilize an existing water system or improvement causing significant adverse effects, either individually or cumulatively, on said groundwater basins in Napa County, unless that variance would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of this code.

6. 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 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.

7. In the case of a development or improvement with a reasonably foreseeable connection to a public water supply as defined in 13.15.010, regardless of the number of parcels served, grant of the variance would not require a new water system or utilize an existing water system necessitating a groundwater permit pursuant to Chapter 13.15. This finding shall not be required if the applicant presents substantial evidence demonstrating that grant of the variance for such development or improvement would not have a significant adverse effect on the underlying groundwater basin; or if that variance would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of this code.

B. If the proposed variance is for the purpose of permitting the creation of one or more parcels that will be less than the minimum parcel size established by subsection (A) of Section 18.104.010, the commission shall approve the requested variance only if it makes the following additional written findings: _____

1. The parcel(s) proposed to be created will be less than the minimum size established by the underlying zoning district regulations;
2. The parcels proposed to be created result from a parcel being bisected by a county road as a result of a county-initiated realignment of an existing public road; and
3. The primary purpose of that realignment is to correct or eliminate a documented hazardous condition.

C. Except as provided in subsection (B), variances of the minimum parcel size are not permitted. (Ord. 1230 § 7, 2003: Ord. 1162 § 7(d), 1999: Ord. 901 § 1, 1988: Ord. 511 § 1 (part), 1976: prior code § 12825)

18.128.070 Approval—Notification of county assessor.

If a variance is granted, the director shall within thirty calendar days of such approval notify the Napa County assessor of the approval. (Ord. 867 § 22 (part), 1976: prior code § 12825.5)

18.128.080 Unauthorized use or activity.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not authorized by zoning district regulations governing the parcel of property. (Ord. 511 § 1 (part), 1976: prior code § 12826)

Title 18 ZONING*Chapter 18.104 ADDITIONAL ZONING DISTRICT REGULATIONS**18.104.230 Wineries located in open space areas—Setbacks.**

A. The minimum setback for wineries shall be as follows:

1. Wineries, or structures containing accessory uses allowed by Sections 18.16.030(G) and (H) and 18.20.030(I) and (J), shall meet a six hundred foot setback from the centerline of any state highway, Silverado Trail, or any arterial county road. Underground portions of caves are not subject to the winery or yard setback requirements. Cave portals shall be required to meet the setback if the portal is visible from the applicable road. If the associated entry pad outside of the cave portal is used for winery functions (such as, but not limited to, placement of winery equipment, crushing, visitation, etc.), then the pad is also required to meet the winery setback requirements.

2. Wineries, or structures containing accessory uses allowed by Sections 18.16.030(G) and (H) and 18.20.030(I) and (J), which are located on parcels contiguous to any other public road or private road(s) used by the public: three hundred feet from the centerline of the road. For purposes of this section only, a private road is considered "used by the public" if it provides primary access to at least one parcel other than the parcel(s) on which the winery is located. Underground portions of caves are not subject to the winery or yard setback requirements. Cave portals shall be required to meet the setback if the portal is visible from the applicable road. If the associated entry pad outside of the cave portal is used for winery functions (such as, but not limited to, placement of winery equipment, crushing, visitation, etc.), then the pad is also required to meet the winery setback requirements.

B. Any winery existing on the date of adoption of the ordinance codified in this section may expand within the minimum setback specified in subsection (A) of this section. Notwithstanding the previous sentence, expansions may be permitted within the minimum setback area only if the expansion is placed no closer to the centerline of the right-of-way than the nearest point of the existing structure to which the expansion is attached. Any new freestanding structure shall comply with the setback provisions of subsection (A) of this section.

C. Legally constructed structures, existing prior to the enactment of the Winery Definition Ordinance (January 23, 1990), may be exempted from the setback provisions of subsection (A) of this section if it is found that use of this exemption will result in a more environmentally beneficial placement of the winery. The winery may not encompass or expand beyond the legally established footprint of the structure as it existed on the above stated date. Any expansion of such structure beyond the footprint that legally existed on the above date shall comply with the setback provisions of subsection (A) of this section.

D. Excepting caves, nothing herein shall be construed as permitting construction or improvements within applicable setback or yard areas as specified by other sections of this title. (Ord. 1233 § 11, 2004; Ord. 1227 § 2, 2003; Ord. 1101 § 8, 1996; Ord. 947 § 18, 1990; prior code § 12420)

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