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Previous Staff Reports

**PREVIOUS STAFF REPORT
FROM PLANNING COMMISSION
MEETING**

PROJECT

NAME: summers Winery

PREVIOUS MEETING

DATE: November 18, 2015; January 20, 2016

CONTINUED TO: March 2, 2016

**FOR ATTACHMENTS OF THIS STAFF REPORT PLEASE
REFER TO THE PREVIOUS MEETING DATE ABOVE.**



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 1/20/2016

Agenda Placement: 9B

Continued From: November 18, 2015

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: EMILY HEDGE, PLANNER II - 259-8226

SUBJECT: Summers Estate Winery Use Permit Modification P14-00232 and Variance P14-00233

RECOMMENDATION

SUMMERS WINERY - USE PERMIT MAJOR MODIFICATION P14-00232 & VARIANCE P14-00233

CEQA Status: Consideration and possible adoption of a Negative Declaration. According to the proposed negative declaration, the project would not have any potentially significant environmental impacts. The project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Request: Approval to modify the previous approvals for an existing winery (#U-238384, #U-108586, #96408-UP, #03075-MOD) to allow the following activities: 1) Recognize and approve the conversion of the existing 2,350 square foot residence to a tasting room; 2) Recognize and approve the conversion of the existing 530 square foot tasting room within the winery into a storage room; 3) Expand the visitation program from maximum tours and tastings by appointment only for 12 person per day to 20 persons per day; 4) Increase wine production from 50,000 to 100,000 gallons; 5) Construct a new 5,400 square foot covered tank farm; 6) On-premises consumption of the wines produced on-site, consistent with Business and Professionals Code Sections 23356, 23390, and 23396.5 in the tasting room and on the adjacent patio; 7) Deletion of condition #10 of Use Permit #96408-UP that prohibits outside social activities; 8) Allow the sale of wine-related merchandise in compliance with Napa County Code Section 18.16.030(H)(4); 9) Update fire suppression facilities and install two additional 21,000 gallon water storage tanks and a pump; 10) Install new domestic and process wastewater treatment and disposal with authorization for the use of a hold and haul system during the construction transition period and very extended wet weather periods; 11) Install storm water detention and conveyance facilities; 12) Decrease the number of on-site parking spaces from 16 to 15 spaces; 13) Realign the existing parking and landscaped areas; 14) Add one loading dock; and 15) Architectural modifications to the existing residential structure. The project also includes an application for a variance to allow construction of the covered tank farm within the required 600 foot winery setback from Tubbs Lane. The covered tank farm is proposed approximately 327 feet from the centerline of Tubbs Lane. The proposed project site is located at 1171 Tubbs Lane, Calistoga, on a 25.3-acre site, in the Agricultural Preserve (AP) Zoning District. Assessor's Parcel No. 017-160-015.

Staff Recommendation: Adopt the Negative Declaration, approve the Use Permit and deny the Variance.

Staff Contact: Emily Hedge, Planner II, (707) 259-8226, or emily.hedge@countyofnapa.org

Applicant Contact: Jim and Beth Summers, Property Owners, (707) 942-5508

Applicant's Representative: Jeff Redding, Land Use Planning Services, (707) 255-7375 or jreddingaicp@comcast.net

CONTINUED FROM THE NOVEMBER 18, 2015 REGULAR MEETING.

EXECUTIVE SUMMARY

Proposed Action:

That the Planning Commission adopt a motion of intent to 1) adopt the Summers Estate Winery Negative Declaration, 2) approve the Use Permit Major Modification, and 3) deny the setback Variance. The item would need to be continued to the regular meeting of February 17, 2016, with direction that Staff prepare Findings and final Conditions of Approval for adoption.

Discussion:

On November 18, 2015, the Planning Commission held a public hearing to consider Use Permit Modification # P14-00232 to modify the existing winery Use Permit to increase production, construct a new covered tank farm, expand/recognize the visitation program, allow on premises consumption, and recognize the unpermitted conversion of the existing residence into a tasting room facility. The item was continued to January 20, 2016, to address questions and concerns raised by the public and members of the Commission.

During the hearing the applicant's representative questioned if the project had been evaluated with the correct setback (600-foot) or if, based on a differing naming convention between the General Plan and the Zoning Code, if the project was instead subject to a 300-foot setback. The project would not require a variance if the 300-foot setback was the correct requirement. Staff and County Counsel reviewed the General Plan, Zoning Code, and Winery Definition Ordinance and determined that the 600-foot setback was correct and would apply. See the Background section and attached memorandum from the Deputy Planning Director for additional detail.

As analyzed and discussed in the November staff report, staff felt that at least one of the findings for the requested variance could not be met and therefore could not support that component of the project. However, a majority of the Commission commented that the project, as designed, made good sense and wished to support granting the variance. Prior to the close of the day's proceedings, County Counsel noted the legal obligations for grant of a variance and stated that a legal analysis of the proposed Variance would be provided to the Commission. The attached legal opinion supports Staff's original recommendation that the variance be denied. Staff is, therefore, continuing to recommend denial of the variance and support of an alternative design that does not require a variance.

However, if the Commission determines substantial evidence in the record satisfies the County's variance findings, the Commission may approve the Variance. Therefore, Staff is requesting that the Commission continue the item after completing the public hearing, and provide direction to Staff (in the form of a tentative motion) regarding content of required findings and final conditions of approval.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

A Negative Declaration was prepared. According to the proposed Negative Declaration, the proposed project would have no potentially significant environmental impacts. The project site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

See the November 18, 2015, staff report for analysis of the full modification request. This staff report only contains updates and discussion in response to questions and concerns raised during that hearing.

Discussion Points:

WINERY ROAD SETBACK – During the hearing, the applicant's representative questioned if the appropriate road setback was being applied to Tubbs Lane. Staff used the 600-foot setback listed in the Zoning Code, while the applicant's representative proposed that the project was instead subject to a 300-foot winery setback because Tubbs Lane is not described as an arterial road in the 2008 Napa County General Plan.

The attached memorandum, dated January 6, 2016, addresses the question of the applicability of the 600-foot setback. As discussed in the memo, staff has determined that although there is a difference in the naming of the road types between the current General Plan and the Zoning Code, the 600-foot winery setback prescribed in the Winery Definition Ordinance (WDO) is applicable to Tubbs Lane (arterial road). Therefore the tank farm would require a variance in order to be built in the proposed location. Additionally, this setback has been applied to other wineries on Tubbs Lane, including Tamber Bey Winery, which recently applied for and received a variance to the 600-foot setback.

VARIANCE – Based on the memorandum dated January 6, 2016, the 600-foot winery setback is the appropriate setback. Therefore, the project requires a variance request because the covered tank farm is proposed approximately 327 feet from the centerline of Tubbs Lane, which encroaches approximately 273 feet within the 600-foot winery setback from the centerline of Tubbs Lane. As discussed in the November 18, 2015 staff report, Staff believes the project site does not meet the required variance findings and thus does not support grant of the variance as follows:

Finding 18.128.060.A.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."

Staff Comment - It does not appear to Staff that there are special circumstances constraining the property. The project site is rectangular, 25.3 acres in size, level, with approximately 1,500 feet of frontage on a public road, and surrounded by similarly shaped properties developed in a similar manner. The property presently contains a winery, and vineyards which are similar privileges enjoyed by other property in the vicinity and under identical zoning classification. The existing winery was developed prior to the current winery zoning regulations and is consequently located within the required 600 ft. setback. County zoning allows for the expansion of such facilities,

but requires the expanded areas to be attached to existing buildings. The applicant's proposal is for a free-standing building, and is subject to the 600 ft. setback. The project can be expanded without a variance by attaching the tank farm structure to an existing building. The applicant's preference for a design that is not attached to the existing building does not create a special circumstance that deprives the property of privileges enjoyed by other properties. For additional analysis of this finding, please see the attached memo from County Counsel's office.

Finding 18.128.060.A.3 - "Grant of the variance is necessary for the preservation and enjoyment of substantial property rights."

Staff Comment - The property contains a vineyard, winery, and a residence (converted to a winery tasting room without authorization). Substantial property rights already exist for the site and expansion of the winery is possible without a variance. Therefore, grant of a variance is not necessary for the preservation and enjoyment of substantial property rights. Courts have determined that the purpose of a variance is to prevent an unlawful taking of property. A taking occurs where a regulation prevents substantially all economically viable use of an owner's land. That is not the case here and there is no evidence in the record demonstrating that the variance is necessary to prevent a taking. For additional analysis of this finding, please see the attached memo from County Counsel's office.

On January 5, 2016, the Board of Supervisors provided direction that variance approvals on winery projects should be limited to those variance requests that can satisfy the findings. Although Staff understands and respects both the applicant's wishes for their property and the majority opinion offered by the Planning Commission that the applicant's design is a good design, the facts of this case are such that Staff cannot support the Variance. The WDO has provisions for allowing for the expansion of pre-WDO wineries within required setbacks, and the project can be expanded without need for a variance. Substantial property rights already exist on the subject property and the expansion is not necessary to maintain those property rights.

HISTORY OF USES ON THE PROPERTY - At the November 18, 2015 hearing, the applicant stated that they never used the residence for residential uses, and that prior to the unpermitted conversion to a tasting room, the residence was used as an office. The applicant has since stated that they began usage of the residence as a tasting room in approximately 2011.

The applicant provided a summary appraisal from 2007, which describes the property as "a rural parcel improved with a winery building, a hospitality structure, site improvements and a vineyard planting". Improvements include: 4,880 square foot winery, 2,288 square foot hospitality/office building, and 21.22 acres of varietal vineyard. The structure listed as the "Residence/Offices/Tasting Room" is described in the appraisal as having been a "converted house for public tasting and office use". Remarks include a note that the owner intends to convert the building from residential use to winery use once the county permit is obtained. Discussion with the Assessor's office revealed that the structure has always been assessed as a residential structure. Staff has reviewed building files and there are no building permits for conversion work within the structure. In 2005, a Residential building permit was applied for and issued for stucco work only on the residence.

The applicant's representative stated that in the time since the illegal conversion began, a use permit modification and building permits had been issued on the property and the violation was never noted. These permits did not relate to use of the residence as a tasting room. Although County staff approved other permits and visited the site for inspections related to building permits while the violation was in progress, that does not recognize or allow an unpermitted use to occur.

In 2013, with the submittal of Very Minor Modification application P13-00397-VMM, staff became aware that the applicant was using the residence as a tasting room without the required Planning and Building permits, and Code Enforcement case CE13-00255 was opened. The applicant has been working with staff to correct the Code Enforcement case and is requesting recognition of the illegal conversion of the residence to a tasting room. If this modification is authorized by the Commission, the applicant will be required to obtain all necessary building

permits for the conversion of the structure from a residential use to a commercial use. All work will be required to meet building code requirements for access and safety.

Although the violation has been occurring for an extended period of time, from the time when the applicant was informed by staff that the activity was a violation, they have been actively working with staff to get the use permitted. This does not take away from the fact that the applicant was operating illegally and a violation occurred. As discussed at the November hearing, presuming staff was considering the conversion of the residence without an active code case, the proposal could be supported. Staff still supports the conversion.

LEVEL OF USE - The winery is currently permitted for 50,000 gallons of annual production, 12 daily visitors, and 2 full-time and 2 part-time employees. The studies prepared for evaluation of the proposed modification looked at an increase in production to 100,000 gallons and 20 daily visitors, but retaining the number of employees at 2 full-time and 2 part-time. The environmental analysis of the project was based on the levels of use evaluated in the studies.

At the November hearing, testimony was presented that suggested the existing operation is exceeding both the current approved and the *proposed* levels of visitation and number of employees. Attached are materials from the internet that lend support to testimony that the existing operation conducts drop in visitation, utilizes the outdoor patio, allows on-premises consumption, offers food with tastings, exceeds both approved and proposed visitation levels, and has greater than 2 full-time and 2 part-time employees. Based on evidence reviewed to date, staff is doubtful that the applicant will be able to operate within the proposed level of use.

The existing site and building improvements, in staff's opinion, have been designed to handle larger numbers of visitors and employees than what is currently being proposed. The parking lot contains 16 spaces (reducing to 15 spaces), there is a tasting bar in the approximately 1,400 square foot tasting room/entry, and approximately 5,700 square feet of outdoor area adjacent to the tasting room (including an approximately 850 square foot outdoor patio with four to six tables (approximately 24 chairs), an approximately 400 square foot outdoor trellis, a grass area, and a bocce ball court), all to presumably accommodate only 20 visitors per day.

Staff believe that the size of the areas proposed for visitation uses are not proportionate to the proposed visitation levels and therefore recommend the project be downsized to be consistent with other by-appointment facilities for 20 visitors daily and 2 full-time and 2 part-time employees. In an effort to reduce the potential for future over-usage of visitation areas and resulting potential code enforcement issues, staff is recommending a reduction in the square footage of areas used for visitation. Staff also recommends prohibiting usage of outdoor areas for tours and tastings and on-premises consumption. The outdoor areas would be allowed to be used for the approved marketing events (Use Permit Modification #96408-UP). Additionally, the bocce court should be removed because a bocce court is not an allowed accessory use to a winery, and following conversion of the residence to a tasting room, there is no longer a residential use on the property.

If the applicant wishes to use the outdoor areas for daily visitation and on-site consumption, staff recommends they modify their request to increase visitation. However, further environmental analysis and updated studies would be required, and may lead to requirements for additional improvements including installation of a non-community water system and construction of a left turn lane.

Overall, staff is supportive of the project requests. Staff is supportive of the increase in production, pending a tank farm that is located out of the setback or is in compliance with WDO code for connecting to an existing building. Staff is supportive of the conversion of the residence to a tasting room, the increase in visitation, approval of on-premises consumption in the proposed tasting room, and retail sales on-site. Staff is supportive of other site improvements proposed. Staff would recommend conditioning the project to not allow visitation or on-premises consumption outside and would require the removal of the bocce court.

Public Concerns: The following represents staff or applicant's response to public concerns raised during or

following the November 18, 2015 meeting.

Water/Wells – A request for clarity on the location and productivity of the wells was raised at the hearing. The applicant has provided an updated figure showing the location of the existing wells located on and adjacent to the property. There are four wells on the property. Two wells that are not in use are shown with an "X".

Future residence - A public member contacted staff with a concern that a residence could be built in the future without staff review of water use and removal of vineyards. A single family residence is allowed by right on a parcel zoned Agricultural Preserve, subject to approval of a building permit. If the existing residence is permitted to be converted to the tasting room a new residence could be developed on the property at a later date. Staff does not evaluate the removal of vineyards or water usage as part of building permit applications. At this time, there is no indication that a residence is proposed; therefore it is not reasonably foreseeable and is speculative to require additional review. No further analysis required.

Water study - A public member contacted staff with a concern about the data used in the Water Demand Analysis prepared by RSA, dated September 17, 2014. It appears that Mr. Fenton misspoke at the meeting when he referenced the use of Oakland data. The Water Demand Analysis states that the water demand was calculated using a reference ETo for St. Helena California (44.1 inch/year). No further analysis required.

The Water Demand Analysis included residential water use for a 2-bedroom home in the existing demand calculations for Domestic water use. The applicant noted that the residence has not been used as a residence and therefore this amount should not have been included in the calculations. Modifying the calculations to remove the residential water use, creates a slight increase in Domestic water use, due to increased visitation, but there is still an overall reduction in water demand due to vineyard irrigation with treated process wastewater and a small reduction from the removal of vineyards. No further analysis required.

SUPPORTING DOCUMENTS

- A . Road Setbacks for Wineries Memorandum
- B . Request for Variance Memorandum
- C . Winery Website and Internet Reviews
- D . Applicant Resubmittal Materials
- E . Public Comments Received after the Nov. 18 Hearing
- F . Correspondence Received Day of Nov. 18 Hearing
- G . Project Graphics Packet
- H . Previous Staff Report
- I . Correspondence received after the packet mail out (Added after meeting)
- J . Correspondence received after the packet mail out (Added after meeting)

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 11/18/2015

Agenda Placement: 9A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: EMILY HEDGE, PLANNER II - 259-8226

SUBJECT: Summers Estate Winery Use Permit Modification P14-00232 and Variance P14-00233

RECOMMENDATION

SUMMERS WINERY - USE PERMIT MAJOR MODIFICATION P14-00232 & VARIANCE P14-00233

CEQA Status: Consideration and possible adoption of a Negative Declaration. According to the proposed negative declaration, the project would not have any potentially significant environmental impacts. The project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Request: Approval to modify the previous approvals for an existing winery (#U-238384, #U-108586, #96408-UP, #03075-MOD) to allow the following activities: 1) Recognize the conversion of the existing 2,350 square foot residence to a tasting room; 2) Recognize the conversion of the existing 530 square foot tasting room within the winery into a storage room; 3) Expand the visitation program from maximum tours and tastings of 12 person per day to 20 persons per day; 4) Increase wine production from 50,000 to 100,000 gallons; 5) Construct a new 5,400 square foot covered tank farm; 6) On-premises consumption of the wines produced on-site, consistent with Business and Professions Code Sections 23356, 23390, and 23396.5 also known as AB 2004 (Evans 2008, or the Picnic Bill) in the tasting room and on the adjacent patio; 7) Deletion of condition #10 of use permit #96408-UP that prohibits outside social activities; 8) Allow the sale of wine-related merchandise in compliance with Napa County Code Section 18.16.030(H)(4); 9) Update fire suppression facilities and install two additional 21,000 gallon water storage tanks and pump; 10) Install new domestic and process wastewater treatment and disposal with authorization for the use of a hold and haul system during the construction transition period and very extended wet weather periods; 11) Install storm water detention and conveyance facilities; 12) Increase the number of on-site parking spaces to 15; 13) Realign the existing parking and landscaped areas; 14) Add one loading dock; and 15) Architectural modifications to the existing residential structure. The project also includes an application for a variance for the construction of the covered tank farm within the required 600 foot winery setback from Tubbs Lane. The covered tank farm is proposed approximately 327 feet from the centerline of Tubbs Lane. The proposed project site is located at 1171 Tubbs Lane, Calistoga, on a 25.3-acre site, in the Agricultural Preserve (AP) District. Assessor's Parcel No. 017-160-015.

Staff Recommendation: Adopt the Negative Declaration, approve the Use Permit and deny Variance.

Staff Contact: Emily Hedge, Planner II, (707) 259-8226, or emily.hedge@countyofnapa.org

Applicant Contact: Jim and Beth Summers, Property Owners, (707) 942-5508

Applicant's Representative: Jeff Redding, Land Use Planning Services, (707) 255-7375 or jreddingaicp@comcast.net

EXECUTIVE SUMMARY

Proposed Actions:

Variance Denial Action - That the Planning Commission Tentatively adopts the Summers Estate Winery Negative Declaration and Use Permit Major Modification, and denies setback Variance, and continues the item to the regular meeting of December 16, 2015 with direction that Staff prepare Findings and final Conditions of Approval for adoption.

Alternative Motion:

Variance Approval Action - That the Planning Commission Tentatively adopts the Summers Estate Winery Negative Declaration, Use Permit Major Modification, and setback Variance, and continues the item to the regular meeting of December 16, 2015 with direction that Staff prepare Findings and final Conditions of Approval for adoption.

Discussion:

The project proposes modifications to the existing winery to increase production, construct a new covered tank farm, expand/recognize the visitation program, allow on premises consumption, and recognize all unpermitted conversion of the existing residence into a tasting room facility.

Staff has reviewed and analyzed the proposal and recommends that the overarching request, consisting of increasing production and visitation, is appropriate. However, staff cannot support the variance request as presented by the applicant. See Background sections regarding the variance and Decisions Making Options for discussion. Evaluation of the previously unauthorized tasting room has been approached from the perspective of whether it would be supportable had the conversion not already occurred. Staff determined that the conversion would be supportable. The applicant has been actively working to correct the illegal residence conversion Code Enforcement case through this modification process. Staff believe it is appropriate to recognize the conversion of the residence and allow the space to be used as a tasting room. The variance request does not apply to the tasting room component of the project. Only the proposed tank farm, as proposed, is subject to the variance.

Since Staff recommendation is different than the applicant's proposal and the recommendation (if supported by the Commission) would result in a different project design, Staff is requesting that the Commission continue the item after conducting the full hearing, and provide direction to Staff (in the form of a tentative motion) regarding content of required findings and final conditions of approval. Attached to this report are draft conditions of approval based off the applicant's proposal with areas highlighted concerning the variance request.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

A Negative Declaration was prepared. According to the proposed Negative Declaration, the proposed project would have no potentially significant environmental impacts. The project site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

Owner/Applicant: Jim and Beth Summers, Summers Winery, 1171 Tubbs Lane, Calistoga, 94515

Representative: Jeff Redding, Land Use Planning Services, 2423 Renfrew Street, Napa, 94559

Zoning: Agricultural Preserve – AP

General Plan Designation: Agricultural Resource – AR

Application filed: July 7, 2014

Application complete: August 24, 2015

Parcel size: 25.3 acres

Vineyard Acreage (Existing): ± 21 acres

Vineyard Acreage (Proposed): ± 20.3 acres (Removal of approximately 0.7 acres)

Winery Characteristics:

Winery Building Size (Approved): ± 5,850 sf.

Winery Building Size (Approved and proposed): ± 13,550 sq. ft. (comprised of existing winery building, tank farm, and converted residence)

Production Capacity (Approved): 50,000 gallons annually

Production Capacity (Current): Approximately 33,000 gallons annually (2013)

Production Capacity (Proposed): 100,000 gallons annually

Development Area (Approved): ±8,000 sf

Development Area (Existing): ±10,300 sf (approved plus 2,300 unpermitted use of residence)

Development Area (Proposed): ±16,200 sf or 0.37 acres

Winery Coverage (Approved): ±32,500 sf

Winery Coverage (Existing): ±34,800 sf (approved plus 2,300 unpermitted use of residence)

Winery Coverage (Existing and Proposed): ± 45,500 sf or 1.04 acres; 4.1% of the parcel (Maximum 25% or approximately 6.30 acres).

Accessory/Production Ratio (Approved): ±530 sf accessory/±6,500 sf production; approximately 8%

Accessory/Production Ratio (Existing): ±2,300 sf accessory/±7,000 sf production; approximately 33%.

Accessory/Production Ratio (Approved and Proposed): ±2,300 sf accessory/13,000 sf production; approximately 18% (Maximum 40% allowed)

Number of Employees (Approved): 2 full-time and 2 part-time; 2 additional during harvest employees

Number of Employees (Proposed): No change (Staff recommends conversion to less-than-10 employees)

Visitation (Approved): 12 people/day

Visitation (Proposed): 20 people/day maximum; 140 maximum weekly

Marketing Program (Approved): 8 annual events, 30 persons maximum (#96408-UP)

Marketing Program (Proposed): No change

Days and Hours of Operation (Approved): 10 am - 5 pm, Monday through Sunday

Days and Hours of Operation (Proposed): No change

Parking (Approved): 20 parking spaces

Parking (Existing): 16 parking spaces

Parking (Proposed): 15 parking spaces

Setbacks (Required): Front (Tubbs Lane) – 600 ft.; east side yard – 20 ft.; west side yard (Hwy 128) – 600 ft. and – 20 ft.

Setbacks (Existing winery building): Front (Tubbs Lane) – 130 ft. to centerline of Tubbs Lane. The original winery was approved prior to 600-foot winery setback; Rear – 800 ft.; Side (Hwy 128) – 1,200 ft. to the closest point on Hwy 128; and Side – 95 ft.

Setbacks (Existing residential structure): Front (Tubbs Lane) – 218 ft.; Rear – 700 ft.; Side (Hwy 128) – 1,350 ft. to the closest point on Hwy 128; and Side – 60 ft.

Setbacks (Proposed tank farm - Variance requested): Front (Tubbs) – 327 ft.; Rear – 600 ft.; Side (Hwy 128) – 1,200 ft. to the closest point on Hwy 128; Side – 128 ft.

Adjacent Zoning / Land Use:

North: AP– The property directly to the north is vacant; other properties to the north include rural residential, vineyards, and wineries.

South: AP – The properties to the south are rural residential and developed with vineyards; the property on the southeast corner of 128 and Tubbs is Commercial Neighborhood (CN); properties across Highway 128 are AW.

East: AP - The properties to the east developed with residences, vineyards, and wineries.

West: AP - The properties to the west are developed with residences and vineyards.

Nearby Wineries (within one mile of the project site):

The attached table lists the 11 wineries operating or approved to operate on properties within one mile of Summers Winery. Two of those wineries are located within the City of Calistoga.

Property History:

November 2, 1983 – Use Permit #U-238384 was approved to permit a 20,000 gallon per year winery with no public tours or tastings. The winery is located within existing approximately 500 square foot building.

September 18, 1985 – Use Permit #U-108586 was approved to expand the existing winery with an approximately 1,600 square foot addition for wine storage.

March 5, 1997 – Use Permit #96408-UP was approved to increase production capacity to 50,000 gallons per year; an increase in the size of the winery building from approximately 2,100 square feet to 5,850 square feet, increase crush pad from 960 square feet to 2,400 square feet; increase parking from five to twenty spaces; increase employees from zero to two full time and two part time; and add retail sales of wine produced on the property, private tours and tastings by prior appointment, and marketing activities limited to eight food and wine tastings per year by private invitation only for not more than 30 guests per event. The production increase of 30,000 gallons was subject to the 75 percent rule.

May 20, 2003 – Use Permit Modification #03075-MOD was approved to allow for the construction of an approximately 950 square foot cover for an existing crush pad, window replacements, and two off-site directional signs located within Tubbs Lane right-of-way.

November 14, 2013 – Very Minor Modification P13-00397-VMM application to allow for retail sale of wine related merchandise in compliance with Napa County Code Section 18.16.030.H.4 and to allow on premises consumption of the wines produced on-site, consistent with Business and Professionals Code Sections 23356, 23390, and 23396.5 also known as AB 2004 (Evans 2008, or the Picnic Bill). The request for this modification has been closed due to Code Enforcement case CE13-00255 which opened shortly after this modification was submitted. The applicant decided to process the requests of the Very Minor Modification with the Major Modification that would be used to correct the Code Enforcement violation.

CE13-00255 – Code Enforcement case for unpermitted conversion of a residence to a commercial use as a tasting room and conversion of the approved tasting room into production space. A use permit modification was not approved and building permits were not obtained for the conversion work. This violation is active, but is undergoing corrective measures through Major Modification P14-00232.

Code Compliance History:

The winery was included in the 2013 winery audit and was found to be in compliance with production and the 75% rule.

In 2013, with the submittal of Very Minor Modification application P13-00397-VMM, staff became aware that the applicant was using the residence as a tasting room without the required Planning and Building permits, and Code Enforcement case CE13-00255 was opened. The applicant has been working with staff to correct the Code Enforcement case and is requesting recognition of the illegal conversion of the residence to a tasting room. If this modification is authorized by the Commission, the applicant will be required to obtain all necessary building permits for the conversion of the structure from a residential use to a commercial use.

Discussion Points:

Setting - The existing land uses include a winery building, covered crush pad, parking lot, former single-family residence which has been illegally converted for use as a tasting room, outdoor patio, bocce ball court, and vineyards. Approximately 21 acres are planted in vineyard and approximately one acre of the site is currently developed with the existing structures and improvements.

The existing 50,000 gallon winery was originally approved in 1983 as a 20,000 gallon facility. The winery has undergone multiple modifications to increase the size of the winery development and the production capacity. The existing winery complex was sized to accommodate 50,000 gallons of production, and is insufficient to accommodate the requested production increase to 100,000 gallons. The new tank farm will give the applicant

additional area for production tanks to accommodate the proposed increase in production. The proposed location of the tank farm is subject to the 600 foot winery setback and the applicant is requesting a variance for approval of the tank within this setback. The covered tank farm is proposed approximately 327 feet from the centerline of Tubbs Lane. The location is requested in order to have the new tank farm be integrated into the existing winery complex. The applicant would utilize the existing outdoor area adjacent to the residence for on-site consumption.

Proposed Tank Farm – The new tank farm area would create additional space to accommodate the proposed increase in production. The proposed location of the tank farm is subject to the variance request. See discussion below.

Variance –The application includes a Variance request because the covered tank farm is proposed approximately 327 feet from the centerline of Tubbs Lane. This encroaches approximately 273 feet within the 600 foot winery setback from the centerline of Tubbs Lane.

To approve a variance the Planning Commission must meet all five of the required findings listed below. As discussed individually below, Staff believe the project site does not meet at least one of the required findings and thus does not support grant of the variance. The applicant believes the project meets all required findings. Please refer to the applicant's narrative and submittal materials, attached, for their rationale supporting grant of the variance.

Required Findings pursuant to 18.128.060

1) That the procedural requirements set forth in this chapter have been met.

Staff Comment: This requirement as 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.

Staff Comment: The project site is located on the valley floor, is flat, rectangular, has no environmentally sensitive areas, and contains a vineyard and winery. Other similarly shaped and sized properties are in the vicinity which are located in the same agriculturally zoning district and are developed with vineyard and wineries. Addition of the proposed tank farm, although not ideal, is possible outside of the 600 setback. There is no special circumstance applicable to the property's characteristics that prevents the proposed tank from meeting the setback. The property owner presently enjoys the privilege of a winery use permit, shared by other property owners in the vicinity under the identical zoning classification, and would not be deprived of this privilege should the variance request be denied.

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

Staff Comment: Staff believe the applicant will suffer some level of practical difficulties and unnecessary hardships in the event a variance is not granted. However, given that the property already contains a vineyard and winery, it is difficult to demonstrate that a variance is necessary for the preservation and enjoyment of substantial property rights. The original winery facility was constructed prior to the current zoning regulations that require winery improvements to be constructed a minimum of 600 ft. from major County roads. The existing winery structures are setback only 130 ft. from Tubbs Lane. If a variance is not granted, the applicant is left with three options that represent varying degrees of practical difficulty as follows: Option 1 - move entire existing winery operation outside of the 600 ft. setback; Option 2 - construct tank farm outside of the setback approximately 400 ft. from the existing winery complex; Option 3 - construct tank farm as a building addition no closer to the existing setback than the current facility. Of these options, Option 3 results in the least amount of practical difficulty. See attached exhibit

showing examples of winery additions that would not trigger a variance.

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

Staff Comment: The project as designed has no significant adverse affects to public health, safety or welfare. The applicant's proposal is a superior design to the options discussed in finding #3 above.

5) Findings 5, 6 and 7 pertain to groundwater use, and the applicable finding depends on whether the project is located in a groundwater deficient area (#5), outside of a groundwater deficient area (#6), or connecting to a public water supply (#7). In this case finding #6 applies with operative language as follows: "...substantial evidence has not been presented demonstrating that grant of the variance might cause a significant adverse affect on any underlying groundwater basin..."

Staff Comment: As set forth in the attached initial study hydrologic section and water availability analysis, the project does not have a significant impact on groundwater resources and this finding can be met.

Additional Factors:

The original winery, approved in 1983, utilized an existing building located approximately 130 feet from the centerline of Tubbs Lane. In 1985, a modification permitted the expansion of the existing winery by 1,600 sq. ft. Both of these permits were approved prior to the setback requirements. In 1997, another modification was approved to increase the size of the winery building. The addition met the requirements of Napa County Code Section 18.104.230.B, which allows an existing winery, approved prior to the adoption of the ordinance (Winery Setbacks), to expand within the minimum setback area provided 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. A Variance was not required.

Because the proposed tank farm is a new stand-alone structure, separate from the existing winery, it is subject to the setback requirement and approval must satisfy the variance findings. The proposed location is requested in order to have the new tank farm be integrated into the existing winery complex. The proximity to the existing facilities would result in greater processing efficiency and require less development of the site. The covered tank farm is proposed approximately 145 feet behind the existing winery building. If the structure was sited to meet the 600 foot setback it would be located over 400 feet from the existing winery building. A location meeting the setback would require additional removal of vineyard for a driveway to the tank pad and further extension of infrastructure. Additionally, a location meeting the setback would have greater visibility from Tubbs Lane.

As stated by the applicant, meeting the requirement represents a hardship and provides no tangible benefits to the public. The applicant claimed hardships resulting from complying with the setback include greater environmental effects, increased removal of vineyard, and greater visibility of the tank farm from Tubbs Lane.

Staff would like to note that if the tank farm was proposed as an addition to the existing winery building and it met the requirements of Napa County Code Section 18.104.230.B, as stated above, the 5,400 square foot structure would not be subject to the setback and a variance would not be required. The expanded structure could be permitted at approximately 130 feet from the centerline of Tubbs Lane. Siting the building in this location would substantially increase views from Tubbs Lane and would not meet the intent of the WDO which was established to reduce the corridor effect of wineries along the same road.

Tasting Room (unpermitted conversions) – As discussed above, the applicant illegally converted the 2,300 square foot residence into a new tasting room for the winery and illegally converted the approximately 500 square foot approved tasting room to production space. This violation is active, but is undergoing corrective measures through this Major Modification. If this modification is approved, the violations will be corrected upon completion of the

building permit process. If the modification is denied, the permittee would be obligated to return the tasting room to residential use.

The conversion of the existing residence, which is located approximately 215 feet from the front property line, is not subject to a Variance. The applicant is not proposing the change the footprint of the building and therefore, the conversion is in compliance with Napa County Code Section 18.104.230.C., which states that "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".

Staff believes the conversion of the residence to winery use is environmentally superior in this case because the location of the residence is in close proximity to the approved winery building and improvements. Conversion of the existing structure appears more suitable than removal of the structure and replacement with or construction of a new tasting room structure elsewhere on the property. Additionally, no further earth disturbance would occur and no vineyard removal would be necessary. In context of the Variance discussion above, a new tasting room could occur in this location without a variance if the structure was built as an addition attached to the existing winery structure in compliance with Code Section 18.104.230.B.

Visitation and Marketing – Exhibit A compares the Summers Winery proposal for increased visitation and increased production with wineries that currently have an annual permitted production capacity of 100,000 gallons. The proposed increase in visitation and the existing marketing program (no changes requested) are lower than the average and median calculations for other 100,000 gallon, by-appointment only wineries. Although Staff is supportive of the proposed increased visitation, the Commission should be aware that evidence suggest that current daily visitation limits and by-appointment only practices have been violated. Proposed conditions of approval would allow 140 visitors per week maximum, based off 20 daily maximum visitors multiplied by 7 days.

Groundwater Availability

According to the Water Availability Analysis (WAA) Tier One submitted with the application, based on the parcel size of 25.3 acres with a parcel Location Factor of 1.0 acre feet per acre per year (Valley Floor) the site would have an Allowable Water Allotment of 25.3 acre feet per year.

RSA+ prepared a Water Demand Analysis, dated September 17, 2014, detailing the existing and proposed ground water uses. According to the analysis, there will be an overall reduction in annual water demand from 3.9 million gallons per year (12 acre feet per year) to 3.5 million gallons per year (10.8 acre feet per year). Reductions in demand are due to reuse of treated process wastewater for vineyard irrigation and removal of vineyards required for the construction of the covered tank farm. The anticipated usage of 10.8 acre feet per year is below the estimated Allowable Water Allotment of 25.3 acre feet per year.

The project site currently contains four wells and one 6,000 gallon storage tank which supply water for the winery and residence. The project proposes installation of two additional 21,000 gallon water storage tanks for fire protection.

Requirement for a water system and new well - The Environmental Health Division has reviewed the application and determined that in order to comply with the California Safe Drinking Water Act and related laws, a non-community water system needs to be installed. The current wells on the property cannot meet the required standards of Title 22 California Code of Regulations, therefore the applicant will be required to drill a new well meeting the construction standards. Installation of a water system and associated well will ensure that public health and safety is maintained. Although the project will require a new well, there is no increase in water use

associated with the community water system. As discussed above, the WAA Tier One analysis showed a decrease in water use; therefore the new well would not represent an impact on groundwater levels.

Hold and Haul System - The applicant has stated that a hold and haul system may be installed during the transition period from the existing system to the surface drip irrigation system. The Winery Wastewater Feasibility Report also included a hold and haul system as an option for emergency situations such as the unlikely event of extended wet weather.

Traffic Impact Report and Left Turn Lane Analysis - The applicant submitted a Traffic Impact Report prepared by Crane Transportation Group, dated December 19, 2014, which analyzes existing and proposed traffic conditions for: Roadway Segment Level of Service; Intersection Level of Service; and Signalization Needs.

The report determined that the proposed project would result in one (1) to two (2) more visitor vehicles accessing the project site per day on a weekday, with three (3) additional visitor vehicles accessing the project site per day on a weekend day. The project will result in, at most, one (1) outbound trip during harvest Friday PM peak traffic hour along Tubbs Lane, with, at most, one (1) inbound or one (1) outbound trip during the harvest Saturday PM peak traffic hour. By 2030, the report also determined that all evaluated roadway segments would maintain acceptable Levels of Service (LOS) B to D operation with the addition of project traffic.

With respect to Intersection Level of Service, the report states that by 2030 the project traffic would not produce a significant level of service impact at either the S.R. 128/Tubbs Lane or S.R. 29/Tubbs Lane intersections during either the Friday or Saturday PM peak traffic hours along local roadways. Project traffic would not change any acceptable operation to unacceptable conditions, nor would it increase volumes by 1 percent or more when "Without Project" operation would be unacceptable. The S.R. 128/Tubbs Lane intersection would already have unacceptable operation during both the Friday and Saturday PM peak hours without project traffic. However, project traffic would increase volumes less than 0.1%.

Furthermore, by 2030 the report shows that project traffic would not produce a significant signalization needs at either the S.R. 128/Tubbs Lane or S.T. 29/Tubbs Lane intersections during either the Friday or Saturday year 2030 PM peak traffic hours along local roadways. Project traffic would not increase volumes by 1 percent or more when "Without Project" volumes would already meet peak hour signal warrant criteria levels.

The Traffic Impact report also analyzed the left turn lane requirement for the site. Currently there is no left turn lane provided on the eastbound Tubbs Lane approach to the Summers Winery driveway and a continuous double yellow centerline is provided between the S.R. 128 and S.R. 29 intersections, prohibiting passing along the entire length of the roadway. Utilizing traffic data collected during crush season in September 2014, the Traffic Impact Report found that the weekday daily two-way volumes, Average Daily Trips (ADT) of 39 vehicles on the Tubbs Lane/project access driveway intersection already meets County warrant criteria for provision of a left turn lane on the eastbound Tubbs Lane intersection approach. However, a supplemental letter was submitted by RSA+ that further evaluated the projected driveway volumes on Tubbs Lane. The analysis utilized 23.2 daily trips, calculated from the Use Permit application Trip Generation Sheet, and found that the proposed winery driveway does not meet the warrant for a left turn lane.

The Deputy Director of Public Works reviewed the Traffic Impact Report and the RSA letter and determined that the Traffic Impact Report utilized traffic volumes representative of peak season activity, while the RSA letter utilized annual average figures as calculated on the Trip Generation Sheet. The use of annual average figures is consistent with County standard practice for evaluating the warrant for the left turn lane. He concurred with the conclusion reached by RSA and determined that a left turn lane was not warranted at the site (reports attached).

Grape Sourcing – The grape sourcing requirement, as defined in proposed Condition of Approval 5.0 Grape Sourcing, will be applied to 80,000 gallons of the approved 100,000 gallons. The original 20,000 gallons was

permitted prior to the Winery Definition Ordinance (WDO) and is not subject to the 75% rule. The subsequent 30,000 gallon increase (#96408-UP) and this proposed 50,000 gallon increase would be subject to the 75% rule.

Bocce Ball Court - There is currently a bocce ball court on the property. The County does not have a policy enabling bocce ball courts at wineries. However, bocce ball courts presently exist at other wineries throughout the County. Staff is only aware of one circumstance where a bocce ball court is formally recognized in a winery use permit (Bell Winery). Otherwise, most bocce ball courts have occurred in a similar fashion to this winery. It is possible that a formal policy regarding bocce ball courts and other outdoor entertainment uses may be developed in the next several months in concert with the ongoing Agricultural Protection Advisory Committee recommendations that are advancing to the Board of Supervisors for recommendation. In advance of any formal policy, for the Planning Commission to approve a bocce ball court as part of this project, the Commission will need to determine that the use is an acceptable accessory use to the wine being produced at this facility.

Greenhouse Gas Reduction Strategies - The applicant proposes to incorporate GHG reduction methods including: pre-plumbing the roof of the covered tank farm for installation of photovoltaics, planting of water efficient landscaping, and utilization of recycled process waste water for irrigation. Remodel work required for the conversion of the residence to the tasting room will be required to meet current Cal Green Building Code. The applicant currently utilizes energy conserving lighting in the winery building and has bike parking.

Public Comments – As of November 9, 2015, one public comment letter in support of the project was received (Attached).

Decision Making Options:

Option 1- Approve Applicant's Proposal

This option would result in approval of the actions requested in the major modification including approval of a variance for the tank farm.

Discussion - Staff does not support approval of the variance because at least one of the five required findings cannot be made. If the Commission finds, based on the evidence in the record, that all findings can be made and wish to approve the project, then such direction should be provided to staff in the form of a Tentative Motion with action to continue the item to a future date for staff to return with findings and final conditions of approval. This option has been analyzed for its environmental impacts, which were found to be less than significant.

Action Required - Follow proposed Alternative Action language listed in the Executive Summary. Articulate how required findings for grant of variance are made. If the conditions of approval are to be amended, specify conditions to be amended at the time a motion is made.

Option 2 - Reduced Development Alternative

This option would require the applicant to reduce the gallons and/or visitation.

Discussion - Although staff do not believe it is warranted, the Commission is not obligated to approve the full extent of requested entitlements. The Commission is free to set alternative maximum production and/or visitation levels, or to phase an increase over time. The option would be appropriate if the Commission wished to have the applicant demonstrate compliance at a lower level of use before authorizing increases in use.

Action Required - Introduce modified tentative action language based on the proposed action language listed in the Executive Summary, and continue the item to a future date with direction to Staff on modified proposed conditions of approval to reflect the intended reductions to the project scope.

Option 3 - Deny Variance Request (Staff Recommendation)

This option would require the applicant to redesign the proposed location of the tank farm to meet the required setback or comply with County code, but otherwise approve applicant's proposal.

Discussion - See graphics attachment showing two alternative tank farm locations that would not require variances and a location of the tank farm that would meet the 600 foot setback. Alternative designs include an addition to the west side of the existing main winery building, matching the existing building setback of 130 feet or expanding a building/covered area to attach the proposed tank farm to the existing main winery building. The design meeting the setback requires the structure to be located in the vineyards, approximately 400 feet away from the existing winery facilities. All three of the scenarios appear less desirable from a design standpoint and would be more visible from Tubbs Lane, but would not require a variance.

Action Required – Follow proposed Action language listed in the Executive Summary. Articulate Commission position on findings for grant of variance. If the conditions of approval are to be amended, specify conditions to be amended at the time a motion is made.

Option 4 - Deny Proposed Modification

This option would result in denial of the requested use permit modification and variance.

In the event the Commission determines that the project does not, or cannot meet the required findings for grant of a use permit modification, Commissioners should articulate what aspect or aspects of the project are in conflict with required findings. State law requires the Commission to adopt findings, based on the General Plan and County Code, setting forth why the proposed use permit modification is not being approved.

Discussion - The applicant would be required to convert the tasting room back to a residence, reduce visitation to permitted levels, and not increase production above 50,000 gallons annually.

Action Required – Commission would take tentative motion to deny project and remand the matter to staff for preparation of required finding to return to the Commission on specified date.

Continuance Option

The Commission may continue an item to a future hearing date at its own discretion.

SUPPORTING DOCUMENTS

- A . Exhibit A Draft Comparison Charts
- B . Applicant Proposed Conditions of Approval
- C . Reviewing Agency Comments
- D . Previous Approvals
- E . Initial Study/Negative Declaration
- F . Public Comments
- G . P14-00233 Variance Application
- H . P14-00232 Use Permit Major Modification Application
- I . Traffic Study and Left Turn Lane Analysis

J . Water Demand Analysis

K . Wastewater Feasibility Report

L . Project Graphics Packet

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina