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Agenda Date: 4/8/2014
Agenda Placement: 9E
Set Time: 11:15 AM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: DARRELL MAYES, CHIEF BUILDING OFFICIAL - (707) 259-8230
SUBJECT: Altamura Vineyards and Winery Appeal - Denial of Certificate of Occupancy for winery

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Frank and Karen Altamura/Altamura Vineyards and Winery to a decision by the Chief Building Official to deny a request to issue a permanent Certificate of Occupancy for the Winery building under building permit B98-00096, located at 1701 Wooden Valley Road in an unincorporated area of Napa County, Assessor Parcel Number 033-070-045. Building permit, B98-00096 was applied for in 1997 and issued in 1998. The building permit was to construct a winery/storage/dwelling/garage on the property.

ENVIRONMENTAL DETERMINATION: Issuance of building permits, certificates and temporary certificates of occupancy are ministerial actions which are Statutorily Exempt from the California Environmental Quality Act, pursuant to CEQA Guideline Section 15268, "Ministerial Projects".

(CONTINUED FROM MARCH 18, 2014)

EXECUTIVE SUMMARY

The Chief Building Official and the Director of Planning, Building and Environmental Services have determined that a CO can only be granted once all construction authorized under a building permit is completed. This position is supported in the California Building Code, the Napa County Code, and the County's consistent practice over the years.

Currently, the entire building does not meet all requirements for issuance of a CO. Although the downstairs winery portion is nearly complete and ready for issuance of a CO, the upper-story residential portion is largely unfinished. Additional inspections are needed and all permit requirements must be met prior to approval of any CO that involves the residence.

Staff has identified options that would enable issuance of a CO for the winery in a manner consistent with the code,

while permitting of the residence continues on a separate track. These options are discussed in more detail in following sections of this report.

PROCEDURAL REQUIREMENTS

1. Chairman introduces the item and staff reports.
2. Chairman opens public hearing and requests testimony from Appellants followed by testimony from other interested parties if applicable.
3. After the Board has heard testimony and received evidence from the Appellants, Staff and any other interested parties, Chairman closes the public hearing.
4. A motion of intent is made and seconded to either deny or uphold the appeal and refer the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on appeal.
5. Chairman calls for the vote on the motion of intent to either deny or uphold the appeal and refer the matter to the County Counsel's office for preparation of a Resolution of findings and Decision on Appeal.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

No there is no environmental impact. Issuance of building permits, certificates and temporary certificates of occupancy are ministerial actions which are Statutorily Exempt from the California Environmental Quality Act, pursuant to CEQA Guideline Section 15268, "Ministerial Projects".

BACKGROUND AND DISCUSSION

Background

The Code Compliance and permitting history on the Altamura property goes back to the mid-1990s and is detailed in the attached Statement of Facts prepared by County Counsel. The winery has been built over the past 15 years in reliance on a building permit originally issued in 1998 and renewed numerous times since then. The 1998 permit included construction of a two-story building with a winery on the first floor and a residence on the second floor. The past several years have been characterized by numerous instances of unpermitted use of the building and the addition of an unapproved wine cave, including unauthorized public tastings and tours in both the building and the cave.

These events resulted in the County filing a civil complaint with the Superior Court in March 2013 to halt the violations. The County and the owner reached a Stipulated Settlement regarding a preliminary injunction for the winery building in April, while issues pertaining to the cave were ultimately decided in the County's favor by the Court in May. As part of the Stipulated Settlement the owner is prohibited from *any* use of the winery until code violations are corrected and the Building Official issues either a Temporary Certificate of Occupancy (TCO) **for wine production only**, or issues a final CO.

The owner has since obtained approval of a use permit modification to include the cave as part of the winery. The electrical, plumbing and mechanical work within the cave has now been permitted and inspected and a CO

was issued on February 28, 2014.

Code violations within the winery were corrected and the Building Official issued a 90-day TCO for wine production purposes only. Construction work in the downstairs winery portion of the building appears is nearly complete. The TCO was extended for an additional 90 days and ultimately expired on October 26, 2013. Pursuant to the County Code (Section 15.08.070(B)), temporary occupancy can only be allowed for a maximum of 180 days. The winery has now requested that the County issue a permanent CO for the winery portion of the building.

Construction in the upstairs residence remains largely incomplete, with only interior wall framing (aside from the completed building shell). The entire building, including both the winery and the upstairs residence, is covered under the same 1998 building permit.

Requirements for Issuing a Permanent Certificate of Occupancy

The California Building Code (CBC) addresses the central issue in this appeal as follows: "The final inspection shall be made after *all work required by the building permit* is completed." (Emphasis added. CBC Section 110.3.10). In this case, "all work required by the building permit" has not been completed. This CBC requirement is carried forward in Section 15.08.070 of the Napa County Code, which sets forth the following requirements for issuing a CO:

A. No new building shall be occupied and no permanent electrical service connection to a new structure shall be provided until:

- 1. The building is completed as approved;*
- 2. All conditions of any applicable development permit are satisfied;*
- 3. All applicable zoning, planning, environmental, public works and fire official requirements have been met; and*
- 4. The final building inspection of the building permit is approved.*

In this case, none of the four requirements specified above have been met for issuance of a CO.

1. The building is not "completed as approved." While the downstairs winery appears to be nearly complete, the upstairs residence is not complete.
2. Conditions attached to the Use Permit Modification have not been met, including but not limited to construction of driveway improvements.
3. The "applicable zoning, planning, environmental, public works and fire official requirements" have not been met because no final inspection has been requested for these areas.
4. While a final building inspection has been conducted for the downstairs winery, the uncompleted upstairs residence has not been inspected. Therefore, "the final building inspection of *the building permit*" has not been approved.

Staff anticipates that once the required driveway improvements are installed, any remaining "zoning, planning, environmental, public works and fire official requirements" can be satisfied without extraordinary effort. The remaining issue is the applicant's request for a "partial" CO while the upstairs residence remains unfinished *and* under the same active permit.

Options for Granting a Permanent Certificate of Occupancy

The Appellant has two options to obtain a CO for the winery building: 1) The upstairs residence can be completed and inspections approved according to the 1998 building permit; or 2) the 1998 permit can be modified to delete

the upstairs residence. When the Appellant decides to complete at some future date, a new permit would be required, subject to the building codes in effect at the time. Under either option, all required inspections must be approved and all permit requirements met, including installation of the driveway and all other use permit conditions.

Staff understands that at least part of the Appellant's reluctance to separate the residence from the 1998 permit is to avoid a requirement to install fire sprinklers, which would be required under current codes. Staff believes there may be other ways to address this concern and has discussed various options with the Appellant in an attempt to resolve these issues.

The Appellant also filed a Motion to Dissolve the Preliminary Injunction in the civil action. The County responded to the Motion and our response is attached. The Motion was heard on March 14, 2014, where it was denied.

Conclusion

The Department appreciates the owner's desire to occupy and use the winery building that has been many years in development. Staff believes there are viable and code-compliant options that can facilitate that outcome in relatively short order. Staff also believes that both the state Building Code and the Napa County Code are clear that granting a final Certificate of Occupancy must include final approval of all work described within the building permit application.

The parties are currently working on a settlement which may include one of the options described above. Absent such a resolution, the Department strongly recommends denial of the appeal.

SUPPORTING DOCUMENTS

- A . Altamura Notice of Intent to Appeal
- B . Altamura Appeal Packet
- C . 1 Of 6 Altamura Appeal
- D . 2 of 6 Altamura Appeal
- E . 3 of 6 Altamura Appeal
- F . 4 of 6 Altamura Appeal
- G . 5 of 6 Altamura Appeal
- H . 6 of 6 Altamura Appeal
- I . Altamura Appeal Statement of Facts
- J . Altamura Appeal County Opposition

CEO Recommendation: Approve

Reviewed By: Molly Rattigan