



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/10/2012
Agenda Placement: 9H
Set Time: 11:00 AM PUBLIC HEARING
Estimated Report Time: 45 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: LINDA STCLAIRE, PLANNER II - 707.299.1348
SUBJECT: Cedar Knolls Vineyards/Palmaz Winery Appeal

RECOMMENDATION

Consideration and possible action regarding an appeal filed by Salon Blue Trust, Robert Pursell Trustee, to a decision by the Zoning Administrator on April 6, 2012 to approve Minor Modification P11-00424-VMM amending the Cedar Knolls Winery Use Permit #00243-UP to allow two blue direction signs and one winery monument sign, located at 4029 Hagen Road within an AW (Agricultural Watershed) Zoning District. (Assessor's Parcel No. 049-27-019).

ENVIRONMENTAL DETERMINATION: Categorical Exemption Class 1: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 1 ("Existing Facilities") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.] The project consists of the addition of the addition of signage for an existing winery involving no expansion beyond existing use.

EXECUTIVE SUMMARY

On April 6, 2012, after considering all written and verbal evidence presented, the Zoning Administrator approved a use permit minor modification amending the original Cedar Knolls (Palmaz) Winery use permit to allow two off-site blue directional signs and one on-site monument sign. The subject property is located on the east side of Hagen Road approximately 500 ft. east of its intersection with Olive Hill Lane and North Third Avenue. Subsequent to the Zoning Administrator action, an interested neighbor, Salon Blue Trust, Robert Pursell Trustee (Appellant), filed a timely appeal of the Zoning Administrator's decision.

The Appellant is objecting to the issuance of this minor modification allowing signage because a 2001 settlement agreement between area neighbors and the winery permittee has a provision that no winery signage would be visible from Hagen Road or North Third Avenue. **The subject m**modification allows two blue directional signs

on Hagen Road and a monument sign at the property entrance adjoining a stub out section of Hagen Road. That 2001 agreement was entered into just prior to the Board of Supervisors approval, on appeal, of the original Cedar Knolls Winery permit. The County is not a party to the settlement agreement, but the terms of the settlement agreement were included as conditions of approval in the project use permit. To change the terms of a use permit, a use permit modification is required. The County has no authority to enforce the terms of the settlement agreement.

Section 2.88.090(A) of County Code states that appeals of Zoning Administrator actions shall be conducted as a *de novo* hearing since the approving action was not part of an electronically recorded hearing. This means that no deference is given to the decision of the Zoning Administrator. The Board may accept and consider any relevant evidence or testimony without considering what occurred before the original hearing officer. Attached to this report are all the materials which were considered by the Zoning Administrator.

PROCEDURAL REQUIREMENTS:

1. Chair introduces item and requests staff report presentation;
2. Chair opens public hearing, requests testimony from the Appellant, followed by the project applicant, and then testimony from any other interested parties;
3. After the Board has heard testimony and received evidence from the appellant, applicant, staff and interested parties, Chair closes the public hearing;
4. A member of the Board makes, and a second member seconds a motion of intent to either deny, or uphold the appeal and refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal;
5. Chair calls for the vote on the motion of intent.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION - Categorical Exemption Class 1: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 1 ("Existing Facilities") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.] The project consists of the addition of the addition of signage for an existing winery involving no expansion beyond existing use.

BACKGROUND AND DISCUSSION

CURRENT STATUS AND ACTIONS BEFORE THE BOARD: The matter before the Board is a neighbor appeal of a Zoning Administrator action approving a use permit modification to allow winery signage visible from public roads. County Code Section 2.88.090 provides for appeals of Zoning Administrator decisions and requires that the Board's appeal hearing be conducted *de novo*, or "from the beginning." The Board may consider all testimony and evidence before it, including all materials submitted subsequent to the Zoning Administrator's action. Following the appeal hearing, the Board may affirm, reverse, or modify the decision by the Zoning Administrator. Upon

closure of the public hearing, the Board should take a tentative action (i.e., adopt a motion of intent) on the appeal and refer the matter to County Counsel's office for preparation of written findings.

USE PERMIT MODIFICATION REQUIREMENTS: Chapter 18.124.070 specifies the process and requirements for issuance of use permits and use permit modification. The use permit modification process allows minor changes to an approved use permit to be heard by the Planning Director or Zoning Administrator.

STATED BASIS FOR THE APPEAL AND ZONING ADMINISTRATOR RESPONSE: Attachment A of this report contains the appellant's basis of appeal. The following section briefly identifies each appeal ground followed by the Zoning Administrator's response. Please refer to Attachment A for the appellant's complete basis of appeal.

Appeal Grounds Nos. 1 through 6: The first six appeal points are recitals for the Cedar Knolls (Palmaz) winery and signage permitting history from 1999 through the Zoning Administrator's April 6, 2012 use permit modification hearing.

Zoning Administrator Response: The decision-making actions and associated dates detailed in the Appellant's first six recitals/appeal points appear consistent with County records, although County Staff does not agree the evidence supports Appellant's assertion in appeal point #3 that the reason no signage was allowed on Hagen and Third Road was "to prevent consumers, some intoxicated, from driving the residential neighborhood surrounding Hagen Road and North Third Avenue looking for wineries." The 2001 Palmaz Winery permit was a very controversial approval, and inclusion of a requirement prohibiting signage was just one of eight project specific conditions intended to address neighbor concerns.

The original winery use permit was submitted for review in 1999, revised in 2000, and ultimately approved by the Board of Supervisors on November 13, 2001. Prior to the Board of Supervisor's approval, a settlement agreement was entered into between certain neighbors and the project applicant. The settlement agreement was contingent upon the terms being included as conditions of approval in the Board of Supervisors' action on the use permit. The first condition states: "No signage for the winery shall be visible from Hagen Road or North Third Avenue."

The Appellant properly notes that the Planning Division erroneously issued Sign Permit P10-00298-SIGN for two off-site blue directional signs in August, 2010. In June, 2011 it was determined that the project use permit prohibited these signs although they are otherwise allowed by right pursuant to zoning code Section 18.116.030.B The error was caused because it was not clear to Planning Division Staff at the time that the terms of the settlement agreement had been included as use permit conditions of approval. Also, the applicant was under the impression that the limitation on signage only applied to the standard winery identification signs and not off-site blue directional signs. As written, the condition of approval leaves some room for interpretational differences. To resolve this interpretation question, the winery permittee filed Use Permit Determination P11-00178-UD to formally clarify how the County would administer the eight project specific conditions, as well as to determine the project's level of compliance with those conditions. The Planning Director determined that any form of signage visible from Hagen Road or North Third Avenue was prohibited under the current use permit, and a use permit modification was necessary to change those restrictions.

Following this determination, the winery permittee filed the use permit modification requesting that signage compliant with current County Code be allowed. During processing of the request the Appellant responded to Staff notices and requested that a formal hearing be set as allowed by County Code. Prior to that hearing, the Appellant provided written testimony objecting to the issuance of the modification. The Appellant was not able to attend the hearing. However, three other neighbors attended the hearing and voiced similar objections to the proposal. They stated that the winery permittee was not a good neighbor, that they had a bad track record of complying with County codes, and that they were going back on a promise to the neighborhood by now requesting signage visible from the public roads. Neighbors claimed that the winery was exceeding visitation limits and that allowing signage would make the situation worse. It was pointed out that several unauthorized winery signs had

been placed on the private driveway leading to the winery. The winery permittee claimed that they were complying with all County codes and that they should be allowed the same type of signage that other wineries are entitled to. They claimed that their existing by appointment customers were within the limits of their permit, and some customers were having trouble locating the entrance to their winery resulting in customers having to make difficult u-turns in the vicinity. The winery permittee felt that the signs would improve safety and allow clients to more directly access the property, thus improving neighborhood compatibility.

At the conclusion of the hearing the Zoning Administrator determined that the findings for granting of a use permit modification had been met by the applicant, and expressed an intent to approve a modified version of the request as follows: a) the applicant would reverse the direction of the one-way private road access and remove the unauthorized on-site directional signs; b) a monument style winery identification sign would be allowed in the vicinity of the new one-way driveway gate where Hagen Road terminates (and where the existing allowed Palmaz vineyard identification sign stood); c) two blue directional signs would be allowed on the public roads consistent with County Code; and d) that the County was not a party to the settlement agreement and had no authority to enforce its terms.

Appeal Ground No. 7: Appellant asserts that approval of the use permit modification violates the settlement agreement between the permittee and neighbors and should not be approved.

Zoning Administrator Response: Although the terms of the settlement agreement were included as use permit conditions of approval, the County is not a party to this settlement agreement nor responsible for its private enforcement. The Appellant asserts that the County must uphold and enforce the settlement agreement in perpetuity until such time that all parties agree to its modification. The Appellant's assertion is simply legally incorrect. The County is has no legal authority to enforce the agreement or to modify it. The County's authority in the matter pertains solely to the enforcement of the use permit terms (conditions) within the bounds of County Code and State law. Enforcement of the terms of this settlement agreement is a civil matter outside of the County's purview.

The County was obligated under County Code and State law to process and act on the use permit modification request made the applicant. To approve a use permit modification, the findings specified in County Code Section 18.124.070 must be met. Likewise, to deny a use permit modification request, the County must determine specifically what findings the request fails to meet. In summary of the findings, the Zoning Administrator determined: a) that all processing/noticing requirements were properly conducted; b) that the request does not adversely affect public health, safety or welfare; c) that the request complies with all provisions of County Code and policies; and d) that the signage had no effect on ground water resources. In approving the request, the Zoning Administrator required changes to the project in response to neighbor concerns. The reversed one-way driveway movement would reduce conflicts with the neighbor sharing what would now be the private exit drive, and the winery identification sign would be located in an area off the through route of Hagen Road and North Third Avenue, only visible from the dead-end portion of Hagen Road where the approved Palmaz Vineyards sign exists.

SUPPORTING DOCUMENTS

- A . Appellant Submittal Materials
- B . Palmaz Winery Use Permit Board Appeal Resolution
- C . 2001 Palmaz Winery Use Permit Approval Letter
- D . Signage Use Permit Modification Application
- E . Neighbor Correspondence for Zoning Administrator Hearing

F . Neighbor Correspondence Photographs

CEO Recommendation: Approve

Reviewed By: Molly Rattigan