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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

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina