



Agenda Date: 4/2/2008
Agenda Placement: 8A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: John McDowell for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Mary M Doyle, Principal Planner - 299-1350
SUBJECT: Pavitt Family Vineyards Winery and Variance

RECOMMENDATION

SHANE & SUZANNE PAVITT / PAVITT FAMILY VINEYARDS VARIANCE REQUEST #P06-01427-VAR

Requests: Approval of a Variance as required by Napa County Code section 18.104.230 (A.)(1.) to allow an existing 3,915 square foot, two story agricultural structure (built in 2004 and currently not being used) to encroach 464 feet into the required 600 foot winery road setback from the centerline of Silverado Trail.

SHANE & SUZANNE PAVITT / PAVITT FAMILY VINEYARDS USE PERMIT REQUEST #P06-01426-UP

Request: Approval of a Use Permit to establish a new 10,000 gallon per year winery to include the following square footage: (1) an administrative office and a 164 square foot laboratory; (2) new construction of a 170 square foot outdoor crush pad; (3) one full-time and two-part time employees; (4) four parking spaces; (5) tours and tasting by appointment only (Monday – Friday from 7 a.m. to 5 p.m.); (6) a marketing plan to include: eight private wine and food tastings per year for wine trade personnel with a maximum of 10 people per event, and one private Harvest event per year with a maximum of 30 people per event. All food events will be catered; (7) installation of a new winery waste water system, a pretreatment drip irrigation system and 3 holding tank(s) totaling 30,000 gallons; and, (8) mobile bottling. The project is located on a 22.84 acre parcel on the east side of Silverado Trail, approximately 600 feet north of its intersection from Dunaweal Lane within an AW (Agricultural Watershed) zoning district (Assessor's Parcel #: 020-350-026) 4660 Silverado Trail, Calistoga.

Staff Recommendation: Deny Variance and Use Permit request, and request applicant propose alternative project design.

EXECUTIVE SUMMARY

The project consists of variance and use permit request to establish a new 10,000 gallon per year winery within an existing agricultural building located 136 feet from Silverado Trail. The winery definition ordinance requires a 600 foot setback. The building was permitted and constructed in 2004 as a agricultural building. Wineries are allowed

within existing buildings within setback, but only if such buildings were constructed prior to 1990. Evidence suggests that the applicant desired to utilize the building as a winery near the time of construction, but they may not have been aware that the winery setback would be an issue. The applicant also indicates that they had discussions with County staff at or near the time of construction, and that they got the impression from the County staff that a winery would be o.k. at the location where the agricultural building was placed. It is unknown what County staff, or department these discussions occurred with.

To approve a variance, the Planning Commission must find that the subject property contains a physical hardship (not financial) that prevents the property owner from enjoying privileges normally granted to other property owners. Staff's evaluation focused on whether a winery structure could reasonable be located on the subject property and meet the required setbacks. Staff concluded that although physical constraints exist consisting of slope and terrain features, these constraints do not preclude construction of a winery that meets the winery setback. A winery could be within a cave, constructed with slope sensitive design outside of the setback, be constructed next to the existing residence, and at a minimum, it could have been located further from the road than the current structure. The fact the structure now exists, and that the applicant had an impression that a winery would be allowed in the building, unfortunately does not constitute a physical hardship. Therefore, although the staff is quite supportive of the concept of a winery of this size and scope locating on this parcel, staff do not believe the findings for granting a variance can be made.

Recommendation: That the Planning Commission take a tentative motion to deny the variance and use permit, and direct staff to prepare findings in support of the Commission's deliberations.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Denial not subject to CEQA. CEQA does not apply to projects which a public agency rejects or disapproves as defined by 14 California Code of Regulations 15270 (a) (State CEQA Guidelines) and County local procedures (Section 506).

BACKGROUND AND DISCUSSION

Owner/ Applicant: Shane and Suzanne Pavitt

Zoning: Agricultural Watershed - AW

General Plan Designation: Agriculture, Watershed & Open Space - AWOS

Filed: November 11, 2006

Building size: The existing 2-story structure is 3,360 total sq. ft.

Production Capacity: 10,000 gallons per year proposed

Proposed Visitation: 4 visitors per day, 10 per week by prior appointment only

Proposed Marketing: 8 private wine events with catered food with a maximum of 10 visitors, and one private harvest event with a maximum of 30 visitors. In summary, a total of 9 events per year are proposed, having from 10 to 30 guests, event dependent.

Number of Employees: One full time employee and 2 part-time employees

Hours of Operations: 7a.m.-5 p.m. Monday -Friday

Parking: 4 on-site parking spaces

Adjacent Land Use/Zoning/Acreage:

Direction	Land-Use	Zoning	Acreage
North	Agricultural, rural residential	AW	36 acres
South	Agricultural, rural residential	AW	22 acres
East	Agricultural, rural residential	AP	69 acres
West	Agricultural, rural residential	AW	55 acres

In the immediate vicinity of the proposed project with access on Silverado Trail, Dunaweal Lane or Pickett Lane are the following wineries: Araujo Estates Wines (U-01-13 for 20,000 gallon winery, by appointment only), Clos Pegase (U-698384 for 200,000 gallon winery, open to the public) and Cuvaision (built prior to the necessity of a use permit, the winery use is captured under use permit #U-517273 and various modifications for 155,048 gallon winery, open to the public).

Parcel History: The parcel has a single family residence, septic system, pool, detached garage, three 10,500 gallon water storage tanks, an agricultural building, waste water system, and 1.8 acres of vineyard. The vineyard is not yet final or producing.

1981: Agricultural Contract #25581-F

2000: #B00-1429 building permit for a new agriculture building. The agricultural building (barn) replaced a deteriorated pole barn located in the same location on the site as the current proposed winery. The pole barn was removed but the barn was not constructed.

2004: #04-091-ECPA, approved for 1.18 of vineyard. To date, the vineyard installation is not final or producing. Building permit #B04-00363 was issued (re-issue of #B00-1429) for the agricultural building permit. The building was constructed with accouterments for a winery building (structural calculations and integrity for supporting barrel storage on the second floor), ADA compliant bathroom, water & wastewater systems, electrical, and parking area.

Also in 2004, a grading violation occurred in conjunction with permits for construction of the applicant's single family residence and accessory uses. In February 2005, the Planning Commission approved a variance and erosion control plan (#P04-00424-VAR & #P04-0423-ECPS) to rectify the violation and allow a road and grading on slopes greater the 50% to access the home site.

Code Compliance:

2004: As noted above, grading violations occurred on slopes greater than 50% prior to approving the applicant's main residence. The violation was resolved in 2005 with the approval of a variance and erosion control plan and the main residence was subsequently constructed.

2007: On October 15, the parcel owner was cited for placing landscape fill, berm, boulders, trees and other plants

into the 42' R.O.W. of Silverado Trail without an encroachment permit. Additionally, on October 22, the applicant was notified that #04-091-ECPA was not implemented as approved and that compliance was necessary within 10 days. The items out of compliance are summarized as follows: a t-spreader was not installed, vineyard block G was cleared too close to an ephemeral drainage, and removal of grading debris was required in and around the ephemeral drainage. Both these items have been corrected as of this writing.

Discussion Points:

1. **Variance Statute / Winery Setback Background** - State law sets a fairly high bar for granting variances. Essentially, applicants must demonstrate that physical constraints on the property prevent the property owner from enjoying privileges granted to other property owners. In this case, the applicant seeks relief to the 600 ft. winery setback. This setback was initiated in 1990 in response to the proliferation of wineries being constructed in close proximity to Highway 29 and Silverado Trail that were resulting in cumulatively degrading the visual quality of Napa Valley. Protection of Napa Valley's visual appeal was considered paramount to protecting the integrity of Napa Valley as the leading wine producing region in the world. Since 1990, all new wineries have met the setback except for the following types of proposals: A) wineries locating within structures that legally existed prior to 1990; B) wineries located within caves, where the cave portal and outside work areas are not visible from the road triggering the setback; and C) wineries granted setback variances where a hardship is demonstrated. There have been approximately 2 dozen winery setback variances granted over the last 8 to 10 years based on various findings of physical hardship.
2. **Subject Property Physical Constraints** - The site is highly sloped and has an ephemeral drainage running through the middle of it. Slopes and the drainage both represent constraints, but staff do not believe they rise to the level that prevent the applicant from either A) meeting the winery setback with an alternatively designed project; or B) encroaching within the setback with a project design that is either not visible from the road or has a reduced visibility from that of the current agricultural building in keeping with the intent of the winery setback ordinance. Although the applicant does not agree, staff believe a winery could be constructed in sloped areas outside the setback, much in the same manner that the applicant constructed their home in 2004 through steeply sloped areas. Alternative designs would include a cave winery, or placing the winery building in close proximity to the home site up the hill and away from Silverado Trail. Lastly, within the setback, the winery building could have been placed further back from the road with less visual impact in areas that were planted with vines, and the building site could have been planted with vines.
3. **County Consultation** - It is unfortunate that the applicant was left with an impression that the new agricultural building within the setback could easily be converted to winery. Staff believe the applicant's assertion that they had discussions with County representatives at the time vineyards and agricultural building were being planned on the site, but it is unknown what staff members and what department these discussion occurred with. Hindsight being what it is, had a winery pre-application meeting occurred prior to the building being constructed, staff believe the applicant would have been made aware that conversion would be problematic. The County encourages pre-consultation meetings on projects and offers weekly set meeting where applicant can meet with senior Planning staff to discuss project merits, issues and process. In this case, it appears that a pre-application meeting for the winery project did not occur until after the agricultural building had been constructed. Although staff is empathetic to the applicant's dilemma, the fact that the applicant moved forward to construct this building without a winery use permit does not constitute a physical hardship that merits grant of variance.
4. **Basis for Negative Recommendation** - It give this department no pleasure to recommend against a project. Staff has concerns that a negative recommendation may give a message that wineries and agriculture are unwelcome on agriculturally-zoned land, which is a message staff in no way wants to convey. To the contrary, Staff believe a winery of the size and scope proposed is quite suitable for the property, and the sole basis for our negative recommendation is our belief that the agricultural building constructed in 2004 does not constitute a physical hardship. Staff recommends that the applicant revise the use permit request to locate the facility in an

area, or with a design that does not require a road setback variance.

Consistency with Standards:

1. Zoning: AW allows a winery (Code section 18.20.030 (H)). The parcel is 22.84 acres which complies with the winery definition ordinance for minimum lot size. With the exception of the winery setback issue, a winery of the size and scope proposed is suitable for the size and location of the subject property.
2. Building/Fire Code: The existing structure (proposed as the winery structure) was permitted by the Building and Fire Departments as agricultural building. If approved for winery use, a building permit is required to convert the structure to commercial standards, some of which have already been completed, such as ADA accessible restrooms.
3. Public Works: The existing entrance is 11 feet and needs to be widened to 20 feet. The existing entrance design and dimensions will not accommodate trucks turning right to enter the parcel without crossing the double yellow lines of Silverado Trail. Because of the short line of sight and the existing entrance location on the high point of the curve, acceleration and deceleration lanes will be required as a condition of approval in the event that a winery use permit is approved for the site.
4. Environmental Management Standards: Environmental Management has indicated that the proposed septic system would comply with standards and is sized adequately for the production, marketing and visitation proposed.

SUPPORTING DOCUMENTS

- A . Attachment 'A' FIRE comments
- B . Attachment 'B' Public Works comments
- C . Attachment 'C' Environmental Management comments
- D . Attachment 'D' BUILDING comments
- E . Attachment 'E' Sheriff Office comments
- F . Attachment 'F' Public comments
- G . Attachment 'G' Application & Supplemental Information
- H . Attachment 'H' Application attached photos
- I . Attachment 'I' additional photos from applicant
- J . Attachment 'J' additional information from applicant
- K . Attachment 'K' Wastewater Feasibility Study
- L . Attachment 'L' Graphics

Napa County Planning Commission: Approve

Reviewed By: John McDowell