



J. Kapolchok
+ Associates

Land Use Planning
Urban Design

July 1, 2022

Scott Orr, Director
Blake Hillegas, Supervising Planner
Permit Sonoma
County of Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

RE: VJB Vineyard & Cellars

Dear Scott and Blake,

The Board of Zoning Adjustments, by straw vote, is recommending a number of conditions that will effectively reduce my client, Henry Belmonte, ability to operate his business by approximately 25% for what may be as long as a three-year period. An imposed restriction that my client has no ability to alter because the actual timeline is in the hands of the regulatory agencies.

The genesis of the recommended conditions was a belief that VJB Vineyard & Cellars lack sufficient motivation to comply with required conditions in a timely manner and that the facility has been operating unlawfully for an extended period of time. Neither of these underlying presuppositions are correct. However, rather than debate this issue, I would like to bring to your attention that even with near immediate permit application (30 - 45 days from Use Permit approval), which is the only action within VJB's control, the time required for County and or State permit review, project construction, and subsequent regulatory agency review could easily be as long as three years.

1500 Manzanita Avenue
Santa Rosa, CA 95404

TEL: 707.526.8939

FAX: 707.526.8985

eMAIL: jkapolchok@sbcglobal.net

eMAIL: jkapolchok@sonomacountylanduse.com

The recommended conditions would limit VJB Vineyard & Cellars to a maximum of 252 guests, guest numbers to be reported monthly, until the following improvements are operational.

- New 1,500 gal/d septic system
- New landscaped, gated and sound-fenced parking lot
- Right-hand turn lane on Shaw Avenue onto State Highway 12
- Removal of on-street parking on Shaw and Maple Avenues as described in the conditions of approval (COA)

It must be noted that as proposed, the additional conditions recommended by BZA would require that all of the above be fully complied with prior to VJB's ability to operate at full capacity. It must also be noted, that in recommending these additional conditions there did not appear to be review or consideration of the relatively stringent timeframes for condition compliance that have already been built into the COA.

Estimated Timeline

New Septic System: Under COA #10, application for a new septic system must be made within 90 days and constructed within 180 days. All stringent but reasonable timeframes agreed upon by the applicant.

Under Permit Sonoma's on-line performance data for Septic Permits, the average time for permit issuance is 22.7 weeks (160 days). Also, it must be noted that the website qualifies the potential reliance on this data by stating the following: "The graphs refer to the past and may not be an accurate predictor of future performance. Performance can be affected by seasonal demand and staff availability."

Furthermore, there is no data on the time required for site inspection and permit sign-off.

Based on the above, and assuming two weeks for inspection and sign-off, a septic permit that is submitted and constructed according to COA #10 would take approximately 1.21 years to completion.

As will become evident, the right-hand turn lane on Shaw Avenue at Highway 12 and the removal of on-street parking on Shaw and Maple Avenues are interrelated with the development of the parking lot. Therefore, there is not the necessity to develop a separate timeline for each of these improvements.

Landscaped, Gated and Sound-Fenced Parking Lot: The COA, as proposed, require a number of conditions to be satisfied before the 75 Shaw Avenue parking lot can be operational. As the analysis below will show, requiring the parking lot to be finalized before VJB Vineyard & Cellars (VJB) can operate at full capacity means that VJB is partially shut-down for what is likely to be a period of three years or more. Furthermore, the extended timeline is primarily due to Permit Sonoma and State of California permit review and issuance times. A situation that is completely out of the control of VJB.

Full operation of the 75 Shaw Avenue parking lot is dependent upon the completion of COA #'s 1, 16, 31, 32, 33, 35, 36, 37, 38 through 55, 73, and 83.

COA 33 requires:

- Final Design Review approval prior to submittal of grading and drainage plans.
- Submittal of grading, drainage, landscaping, irrigation and entry gate plans.
- Submittal of an erosion control plan.
- Construction of the sound fence and receipt of sign-off from an acoustical engineer, Health, Building and Planning.
- Prohibits use of the parking lot until the encroachment permit and improvements on Shaw Avenue are finalized. This means:
 1. Submittal of an application to the DTPW to restrict parking on Shaw and Maple Avenues
 2. Consideration and approval of this application by the Board of Supervisors.
 3. **Construction** of a right-hand turn lane within the existing right-of-way of Shaw Avenue. This requires review and approval of an encroachment permit from the DTPW and **Cal-Trans**.
 4. **Construction** of a left-hand turn lane on Highway 12 within the existing right-of-way, if approved by Cal-Trans. This requires review, approval and issuance of a construction permit from **Cal-Trans**.
 5. Improvement of the northerly pavement return at the Shaw Avenue – Highway 12 intersection. Part of the encroachment permit required from DTPW and **Cal-Trans**.
 6. Construct/perform the necessary road improvements, driveway entrance, crossing, sidewalk, striping, signage etc. as required under COA #38 through 55.
 7. Hire a tribal monitor to oversee grading activities.

From the iteration of the above requirements, which are based on the COA, it is easy to see that even if all required plans and related applications were filed timely (the only thing my client has control over) the 75 Shaw Avenue parking lot would not be operational for at least two to three years. Construction plans for the Highway 12 left-hand turn lane cannot even be prepared until a response is received from Cal-Trans regarding the granting of design exceptions. And, even though the BZA excluded the Highway 12 left-turn lane, the COA require the construction of the improvements prior to grading the parking lot if the design exceptions are granted. Furthermore, it is important to note that Permit Sonoma's own Performance Data indicates that it takes an average **66 weeks (1.27 years) to receive the first round of comments on improvement plans**.

We believe that the BZA was well intentioned in their recommending of additional “performance” conditions. However, we believe the BZA may have overlooked or failed to appreciate the performance criteria (submittal and construction deadlines) that is part of staff’s recommended conditions, how the conditions are inter-related and the fact that the rate determiner is not my client but the review and approval by Permit Sonoma and Cal-Trans.

From the discussion at the BZA public hearing, it is our understanding that the purpose of the recommended conditions is to relieve a perceived community impact engendered by the unanticipated success of VJB Vineyard & Cellars. This impact can be address by the following

actions: Renewal of the septic system application can be done forthwith. That would get the septic system up and functioning as quickly as possible. Through the Use Permit, the COA could be modified such that the sound fence could be constructed immediately upon receipt of a building permit and the parking lot could then be used as a temporary use. Application for removal of parking could be filed with DTPW within 30 days after Use Permit approval. Parking on Shaw and Maple Avenues could be removed and necessary signage installed as soon as approval is received by the Board of Supervisors. All of the other original conditions would continue to be complied with under the submittal and construction deadlines outlined in the original conditions. These proposed actions would address the BZA concerns and would be able to be accomplished within a year. There would be no need to reduce the guest capacity of the facility.

In addition to the above cited “performance” conditions, BZA draft conditions also included the requirement to hire two compliance monitors to be stationed at each entry point. The potential impact of two additional staff persons on traffic, parking and septic capacity has not been analyzed in the project’s CEQA document. When a request was made to the BZA to consider expanding the project’s hours of operation by one hour, staff informed us and the BZA that such an amendment would require modification and recirculation of the CEQA document, which would take 8 to 9 months before returning to hearing. The request was therefore not supported by the BZA. We assume the same would be necessitated by the addition of two additional staff members. Furthermore, the demand to hire two additional staff persons is an unreasonable and financially burdensome requirement on the applicant particularly given that existing staff are available to perform the requested function.

We ask that the above be considered in your report to the BZA and your preparation of a draft resolution and conditions of approval.

Thank you very much.

Sincerely,

Jean A. Kapolchok

Jean A. Kapolchok