

Resolution Number

County of Sonoma
Santa Rosa, California

December 15, 2022

PLP05-0009 Blake Hillegas

RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS,
COUNTY OF SONOMA, STATE OF CALIFORNIA, ADOPTING A
SUBSEQUENT MITIGATED NEGATIVE DECLARATION AND
CONDITIONS OF APPROVAL AND GRANTING A USE PERMIT
MODIFICATION TO VJB VINEYARD AND CELLARS FOR REAL
PROPERTY LOCATED AT 60 AND 75 SHAW AVENUE; APNS
050-275-028 and -052, FILE NO. PLP05-0009

WHEREAS, on October 9, 2007 the Board of Supervisors adopted a Mitigated Negative Declaration (the "2007 MND") and approved a use permit with conditions of approval to VJB Vineyard and Cellars for property located at 9125 Highway 12 (APN 050-275-028; File No. PLP05-0009), now 60 Shaw Avenue, in Kenwood. The 2007 MND studied and the 2007 use permit approved construction and operation of an approximately 5,542 square foot commercial market and wine tasting facility and a 1,087 sq. ft. residence secondary to the approved commercial use. As approved, the project included a 750-square foot wine tasting room, a 750 square foot deli and retail food market serving prepared foods for on- or off-site consumption; a 1,500 square foot upstairs office space, a 400 square foot storage/food preparation area, a 342 square foot utility space/restroom area, and 1,800 square foot case good storage building; and an outdoor patio and picnic area; and

WHEREAS, the 2007 conditions of approval incorporated the mitigation measures identified in the 2007 MND, including measures adopted to mitigate the traffic impacts of the project. One of the mitigation measures that was adopted as a condition of approval required the applicant to construct a left-turn pocket on Highway 12 at the intersection with Shaw Avenue, with minimum storage for three northbound vehicles. As adopted by the Board, the requirement to implement the left-turn lane mitigation measure was deferred until such time as the applicant desired to begin conducting special events and operating under extended normal business hours as provided in the conditions of approval; and

WHEREAS, the 2007 conditions of approval authorize up to 15 special evening events per year on the project site and also authorize extending normal business hours to close at 5 p.m. daily, and those authorizations were likewise deferred until the applicant completed construction of the left-turn lane as provided in the conditions of approval; and

WHEREAS, the 2007 conditions of approval expressly state that a commercial kitchen is not permitted as part of the project, and that with a limited exception for barbecued food, only catered food is permitted to be served at special events; and

WHEREAS, another mitigation measure adopted as a condition of approval requires the applicant to install a right turn lane on Shaw Avenue at Highway 12. This mitigation measure was not deferred; and

WHEREAS, the applicant did not construct the left-turn lane or the right-turn lane as provided in the 2007 conditions of approval; and

WHEREAS, in July 2014, the Sonoma County Permit and Resource Management Department (now "Permit Sonoma") accepted an application filed by Henry Belmonte for VJB Vineyards and Cellars that requested modification of the 2007 use permit and conditions of approval to permit a commercial kitchen, patio food service, and elimination of the option to expand operating hours and host evening special events; and

WHEREAS, on January 13, 2020, Permit Sonoma prepared and circulated a draft Subsequent Initial Study/Mitigated Negative Declaration ("IS/MND") for the required 30-day period. The January 2020 draft IS/SMND was never adopted. On July 27, 2020, Permit Sonoma circulated a Revised IS/SMND to make corrections, provide additional and clarifying information, and provide additional analysis and new or modified mitigation measures in the Hydrology/Water Quality, Transportation, and Tribal Cultural Resources sections, including proposed deletion of the mitigation measure from the 2007 MND that requires installation of a left-turn lane on Highway 12 due to changes in the project and due to a determination that the mitigation measure is legally infeasible. The July 2020 Revised IS/SMND was never adopted. On June 8, 2021, Permit Sonoma circulated a second Revised IS/SMND to include modifications to the applicant's project proposal to install a modified left turn lane design, as feasible, as part of the project included as a condition of approval. The second revised IS/SMND was never adopted; and

WHEREAS, on April 26, 2022, Permit Sonoma circulated an updated revised Subsequent Initial Study/Subsequent Mitigated Negative Declaration (collectively, the "SMND" or the "2022 SMND") for the current project proposal (henceforth, the "Project"). The SMND was updated and recirculated to reflect revisions to mitigation measures concerning the timing of transportation improvements, the "no parking" ordinance on Shaw and Maple Avenues, and to revise the septic monitoring requirements consistent with the Sonoma County Onsite Waste Treatment (OWTS) Manual. The project description retained the applicant's proposal to install a modified left turn lane design on SR-12 as feasible, which is included as a condition of approval. The 2022 SMND was circulated for a 30-day review period and was prepared, noticed and made available for agency and public review in accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines; and

WHEREAS, based upon the information contained in the SMND included in the project file, it has been determined that there will be no significant environmental effect resulting from this project, because mitigation measures are incorporated into the project as Conditions of Approval to reduce potential project impacts to less than significant, including following:

Circulation and Transportation.

Draft condition #36 is revised to modify the requirement to install a right turn lane on Shaw Avenue and remove the requirement to install a left turn lane on SR-12. Draft condition #37 requires that an application be submitted to DTPW for removal of parking on the northwest side of Shaw Avenue between Hwy. 12 and Clyde Avenue, the southwest side of Shaw Avenue for 50 feet from SR-12, and along the northwest side of Maple along the property frontage. Draft Condition of Approval #38 requires that Shaw Avenue be restriped to address no parking and provide sufficient turning radii and lane widths. Draft Condition of Approval #39 specifies that the project will not be in compliance with the conditions of approval until all requirements of Conditions 37 and 38 are met.

Noise.

Draft Condition of Approval #16 has been added requiring retrofitting an existing fence to reduce noise associated with a new commercial parking adjoining a single-family residential use.

Tribal Cultural Resource Monitoring.

Draft Condition of Approval #83 requires the applicant to retain a tribal monitor for potential accidental discovery during all ground disturbing activities.

WHEREAS, on June 2, 2022, the Board of Zoning Adjustments held a duly noticed public hearing on the Project and the SMND. In the hearing, the BZA heard and received relevant oral and written testimony and evidence presented or filed regarding the MND and the Project. All interested persons were given the opportunity to speak and be heard. At the conclusion of public testimony, the BZA closed the public hearing, discussed the Project, the SMND and the draft conditions of approval, and on a 4-0-1 straw vote, made a preliminary determination to adopt the MND and approve the Project, subject to specific modifications to the conditions of approval. The BZA directed staff to return to the BZA with a revised resolution and conditions of approval reflecting the considerations and direction of the BZA as outlined in its straw vote; and

WHEREAS, the BZA's June 2, 2022 straw vote directed staff to include the following in revised conditions of approval for the BZA's final approval:

- a) limit wine and food service customers to 252 people per day until the following improvements are completed:
 - i) implementation of parking restrictions on Shaw Avenue;
 - ii) construction of a right turn lane and other required improvements on Shaw Avenue;
 - iii) construction of a new parking lot and retrofitting noise fencing; and
 - iv) installation of new septic system;
- b) require an additional staff compliance monitor at each entrance gate to monitor and manage patron activity and parking and circulation during all business hours;
- c) provide monthly reporting to Permit Sonoma on the number of daily wine and food service guests;
- d) maximize permeability in the new off-site parking lot;
- e) update the floor plan to eliminate reference to residence and overflow seating in upstairs of wine tasting/market building; and

WHEREAS, following the June 2, 2022 hearing, in which the BZA had closed the public hearing but continued the item for final action, County Counsel and Permit Sonoma received correspondence from the applicant's counsel and planning consultant, alleging errors in the conditions of Project approval as outlined in the straw vote and direction to staff and requesting the public hearing be re-opened to allow the applicant and public the opportunity to comment on the revised conditions of approval. Because the public hearing was closed, this correspondence was submitted only to staff and not to the BZA; and

WHEREAS, staff reviewed the correspondence and determined that a recommendation to reopen the hearing is warranted;

WHEREAS, on December 15, 2022, the BZA held a duly noticed public hearing to receive the revised draft resolution and conditions of approval. The correspondence received from applicant's counsel and consultant were included in the agenda materials for the December 15 hearing. In the hearing, the BZA re-opened the public hearing for the purpose of receiving public testimony about the revised draft resolution and conditions of approval. After receiving public testimony the BZA closed the public hearing, deliberated on the revised resolution and conditions of approval in light of the whole record of the proceedings, including the testimony and correspondence received in the December 15 public hearing, and approved a resolution adopting the 2022 SMND, approving revised conditions of approval, and granting the use permit modification subject to the conditions of approval; and

WHEREAS, the Board of Zoning Adjustments has had an opportunity to review this Resolution and attached conditions of approval and finds that it accurately sets forth the intentions of the Board of Zoning Adjustments regarding the project and SMND;

NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning Adjustments makes the following findings and determinations:

1. The BZA concurs in the SMND's use of existing conditions as the baseline for environmental review of the Project and finds that the existing conditions baseline is appropriate and consistent with the California Environmental Quality Act (CEQA), the State CEQA Guidelines and relevant caselaw. The correct baseline for preparation of the SMND is the conditions existing at the time environmental review of the Modified Project commenced, after the application for modification of the 2007 use permit was submitted in July 2014. At that time, the patio commercial kitchen, barbecue, and pizza oven were installed and the market, deli, wine tasting, and patio food service had commenced. Therefore, the baseline for analysis in the SMND properly considers only the physical changes associated with the proposed project modifications beyond baseline conditions, including the proposed 52-space off-site parking lot, modified roadway improvements, and a new septic system.

2. The BZA finds that certain mitigation measures that were adopted as part of the 2007 MND and incorporated as conditions of approval have been fully implemented, are no longer applicable and accordingly that they are appropriate to delete, including:

2007 Mitigation Measures AES 1 and 2/Prior Conditions of Approval 70 and 72, pertaining to building design and lighting have been met. The single permitted pedestrian connection to Shaw Avenue was relocated with the original construction and has not resulted in adverse environmental impacts; and

2007 Mitigation Measures Noise 2-4/Prior Conditions of Approval 15 and 28 pertaining to construction of a noise barrier on outdoor patio, mechanical equipment specifications, and special events;

2007 Mitigation Measures Hydro 3-4/Prior Conditions of Approval 35 and 36 pertaining to a bioswale and drainage capacity on Maple Avenue;

2007 Mitigation Measure Transportation 3/Prior Conditions of Approval 73 pertaining to a requirement for additional on-site parking;

3. The BZA finds that it is necessary for the SMND to delete mitigation measure Traffic-1, which was adopted as part of the 2007 MND and incorporated into the conditions of approval and requires the applicant to construct the Highway 12 north-bound turn lane, as specified in the 2007 MND and Conditions of Approval, is legally infeasible as a CEQA mitigation measure because the burden of the requirement was not reasonably related to the project's contribution to a cumulative impact. As noted in the traffic study for the 2007 MND and use permit, existing traffic warranted construction of a left-turn lane in that location even without the contribution of the project. Moreover, because the proposed project includes elimination of the option to conduct up to 15 special evening events per year as authorized in the 2007 conditions of approval, Traffic-1 is moot.

4. The BZA finds that the mitigation measures in the SMND that were substituted for measures Traffic-2 and Traffic-3 from the 2007 MND were substituted in accordance with the requirements of CEQA and the CEQA Guidelines. Under CEQA an adopted mitigation measure may be modified or deleted if there is substantial evidence to support a conclusion that the mitigation

measure is no longer necessary, or another mitigation measure would be equally or more effective and substantial impacts would not increase as a result of the change. The BZA further finds that the substituted measures are equally or more effective as Traffic-2 and Traffic-3, and do not themselves cause new significant impacts.

5. The proposed project modifications to the use permit to allow modified circulation improvements, a new septic system, a new off-site parking lot, and formalize use of the commercial kitchen, barbecue and pizza oven to accommodate the existing patio food service are substantially consistent with the Sonoma County General Plan Limited Commercial land use designations and policies because, as conditioned, the existing seating capacity and hours of operation are not being expanded and the new septic system is designed to handle existing customer capacity, which is restricted in the permit. Any existing tasting and table seating areas within the second level of the market building and the case good storage building are required to be removed. In addition, parking and circulation improvements, noise mitigation, and landscape improvements are required.

6. The proposed project is consistent with the C1, Neighborhood Commercial Zoning District because restaurants serving alcohol and similar tasting rooms, and accessory uses such as the off-site parking lot, may be permitted with a use permit provided they are compatible with the surrounding uses. The proposed use, as modified and restricted by conditions of approval, would serve the neighborhood and surrounding areas, and be compatible with the surrounding commercial and residential uses because the seating capacity and hours of operation are limited, and the maximum daily number of wine tasters/food service guests is limited. The daily capacity of wine tasters and food service guests is limited until the correlating improvements are installed, including the new septic system, parking lot, road improvements on Shaw Avenue and implementation of the no parking ordinance. Reasonable temporary reduction in daily guests is justified as correlated to the existing project's non-compliance with zoning code-required parking and septic design standards. When the above improvements are completed, code compliance will be met for a capacity of 313 wine tasting and food service guests and land use compatibility will be improved. Seating capacity is limited to existing seats or standing tasting stations (144 patio seats, plus 13 in the wine tasting room). Furthermore, the project operations remain limited to 10AM to 4PM, and no evening events are proposed or permitted.

7. The establishment, maintenance or operation of the use for which application is made ill not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area. The particular circumstances in this case are: 1) Any non-authorized tasting and table seating facilities within the second level of the market building and the case good storage building shall be removed; 2) the approved tasting room and food service operations shall not serve more than a combined 252 wine tasters and meals a day until required improvements are completed. After completion of improvements, the capacity of wine tasters and meals may be expanded to 313 per day; 3) The design capacity of the outdoor dining area shall not exceed a maximum 3,125 square feet; 4) The patio seating capacity shall not exceed 144 seats and the wine tasting room shall not exceed 13 wine tasting seats or stations; 5) Hours of operation shall be limited to 10 a.m. to 4 p.m.; 6) parking and circulation improvements shall be implemented per the conditions of approval including installation of a westbound left turn lane on Highway 12 as feasible, a right turn lane on Shaw Avenue, and the elimination of on-street parking on the northwest side of Shaw Avenue, the southwest side of Shaw 50' from SR-12, and on the northwest side of Maple along the property frontage; 8) bus, van, and limousine pick-up and drop offs shall occur at the approved on-site loading area; and 9) the off-site parking lot shall be gated and shall only be open for use by VJB from 9:30 to 4:30, and the gates shall remain closed during non-business hours.

BE IT FURTHER RESOLVED that the BZA finds that there is substantial evidence, in light of the whole record, that the project as mitigated will not have a significant impact on the environment.

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments hereby adopts the Subsequent Mitigated Negative Declaration and Mitigation Monitoring Program set forth in the Conditions of Approval. The Board of Zoning Adjustments certifies that the Subsequent Mitigated Negative Declaration has been completed, reviewed, and considered, together with all comments received during the entire public review process, in compliance with CEQA and CEQA Guidelines, and finds that the Subsequent Mitigated Negative Declaration reflects the independent judgment and analysis of the BZA.

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments hereby grants the requested modified Use Permit, subject to the Conditions of Approval in Exhibit "A", attached hereto.

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments designates the Secretary of the BZA as the custodian of the documents and other material which constitute the record of proceedings upon which this decision is based. These documents may be found at the office of the Sonoma County Permit and Resource Management Department, 2550 Ventura Avenue, Santa Rosa, CA 95403.

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments' action shall be final on the 11th day after the date of this Resolution unless an appeal is taken.

THE FOREGOING RESOLUTION was introduced by Commissioner _____, who moved its adoption, seconded by Commissioner _____, and adopted on roll call by the following vote:

Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

Ayes: Noes: Absent: Abstain:

WHEREUPON, the Chair declared the above and foregoing Resolution duly adopted; and

SO ORDERED.