



filed via e-mail

December 14, 2022

To: Board of Zoning Adjustments (BZA)
County of Sonoma

From: Valley of the Moon Alliance (VOTMA)

Re: PLP05-0009 VJB-Revised Supplemental MND
BZA Hearing 12-15-2022
VOTMA Comments on Agenda Packet re VJB

BZA Commissioners,

VOTMA has reviewed the agenda packet for the upcoming referenced hearing as transmitted to it by Permit Sonoma on December 9th. VOTMA was not aware of the applicant's (VJB) communications (Carlstrom and Kapolchok letters) to the County of Sonoma (County) prior to reviewing the agenda materials. Although the BZA has not yet acted on Staff's recommendation to reopen the public hearing, VOTMA asks for BZA's indulgence to provide a response prior to the hearing to the issues raised in those communications. VOTMA hopes this response will facilitate a more efficient resolution of the contested issues in that hearing.

Quantifying Guest Limits

VOTMA addressed the Guest Limit issue in its May 31, 2022 *Supplemental Comments on Staff Report and COAs (Supplemental Comments or Comments)*. A copy of those *Comments* is attached for your reference and use.

In those *Comments* VOTMA urged the BZA to impose Guest Limits both prior to completion of the improvements proposed to be required/authorized in the Amended Use Permit and on an ongoing basis after completion. See Section 3, 4 and 6 of the *Comments*.

VOTMA noted that the 313 per day guest limit importantly also was derived by Staff to be subdivided into 157 food service guests and 157 wine tasting guests.

The separately stated guest allowance was based on the applicant's input that roughly 50% of guests fell in each of those categories. Since the food service guests required 5 gpd of the sanitary system 1500 gallon capacity, whereas the wine service guests required only 3 gpd, the resulting 50/50 split algorithm yielded the 157/157 breakout.

VOTMA urged in Section 4 of the *Comments* that the BZA clarify the 157 food service daily guest limit in the conditions to preclude a situation in which the food service guest count would rise well above that number relative to wine service customers and thus overwhelm the 1500 system capacity.

This can be seen by reversing the math. After taking into account the capacity allocated to the 16 employees ($16 \times 15 \text{ gpd} = 240 \text{ gpd}$), the maximum available daily capacity for guests of 1260 gallons ($1500 - 240 = 1260$) would be fully subscribed by 252 food service guests ($1260/5 = 252$), and assuming no wine service customers. That limit was not explicitly stated in Section 4 of VOTMA's *Comments*. VOTMA believes that number was referenced in its oral comments, but has not verified that. VOTMA also believes that number would be a supportable interim maximum interim guest limit, especially since during the interim period the larger 1500 gallon capacity system will not have yet been installed, and the much smaller existing system would have to deal with that potential volume. The lower level could certainly still tax the existing system.

VOTMA's *Comments* did, however, reference a 252 daily guest number. In Section 3 of those comments, VOTMA urged the BZA to adopt a 7 gpd reference demand number for food service guests. That 7 gpd number is easily within the range supported by Table 1 of the OWTS manual. Using the 7 gpd food service guest capacity demand rather than the 5 gpd that Staff recommended resulted in the total daily guest limit dropping from 313 to 252. The corresponding 50/50 algorithm would produce 126 wine service guests and 126 food service guests per day. The BZA did not consider this alternative approach. VOTMA continues to support the 252 guest level as an appropriate permanent limit .

Finally, in Section 6 of its *Comments* VOTMA did propose a better *alternative* to adopt as an appropriate daily guest limits for the period prior to final completion of the various improvements required to minimize the adverse operational impacts of VJB current operations. Using the same 3 gpd and 5 gpd capacity allocation for wine tasting guests vs. food service guests, and applying the same 50/50 guest type split VJB acknowledged, and applying that to the existing limited available capacity of the old system would result in 73 wine guests and 73 food service guests, or a total of 146 guests per day. The logic supporting that limit is the same as that supporting the 313 guest limit proposed for the upgraded higher capacity system. The BZA also did not discuss this alternative.

Rationale for Lower Interim Guest Limits

In its BZA post June 2 hearing correspondence, VJB seems to argue that the expected lengthy delay in time to implement the modifications required as conditions for granting the Amended Use Permit are largely beyond VJB's control and a reduction in the daily guest limit of 313 is unwarranted and unfair. The comment fails to consider that, until those very changes have been implemented, the level of septic capacity available to service those 313 guests at 157 wine/157 food service will remain inadequate. In addition, during the time the parking lot is being physically improved and formally developed, it will no longer be available as it is now on an unpermitted and ad hoc basis to relieve the strain on parking in the area. The road and turning lane improvements being put in place will also not be there to create the safety and traffic flow modulations and disruptions that caused those improvements to be included as mitigations in the amended permit. As the area is being improved to handle the outsized guest patronage that VJB has been benefitting from over the last 8 years, it is entirely reasonable and appropriate to limit the guest patronage. VJB's objection to what seems like a straightforward course of conduct (scaling back usage while construction of needed improvements occur) is difficult to understand.

VJB's Takings Argument is Legally Off Base and Ignores the Benefits it has Derived from Operating Outside Its Use Permit for the Last 8-10 Years

The proposed reduction in daily guest limits while VJB comes into compliance with its Amended Use Permit is not a regulatory taking that deprives it of all economic value. That is the legal standard that must be met. The conditions imposed are directly related to safe and reasonable operation of its facilities. Compensating VJB for its "expectation interest" in the face of its chronic and ongoing permit violations is ridiculous.

The guest limitation is in any event a temporary condition to facilitate implementation of needed modifications to provide for the health and safety of its guests and the community during future permitted operations.

Further, it is obvious and logical why BZA's temporal reduction in capacity until the required improvement are made makes sense. There is every reason why this applicant should have an incentive to do what it can to encourage the prompt compliance with the conditions. To allow unconstrained operations before the improvements have been made would create no incentive to see that the improvements are made in a timely manner.

VJB has known for years that its operations did not and do not comply with the issued use permit. It has known for several years that the Sonoma Valley CAC recommended unanimously that the amendment not be approved. The BZA retains authority to deny VJB's application. Yet, VJB proceeded to rough out and then operate a parking lot day in and day out for several years even though it had not received approval for that request. It continued to utilize its second floor

facilities for wine tasting activities (and perhaps more) even though that area was always designated as office/admin space. It operated its commercial kitchens even though the use permit explicitly prohibited any commercial kitchen.

This is not the story of an applicant for a use permit that comes forward with clean hands seeking to start up a commercial operation. This is the story of an applicant seeking amendments to an existing use permit that will allow it to do lawfully what it has been doing outside the four corners of its existing use permit for more than a decade.

The BZA should hold to its position.

Thank you for the opportunity to comment.

Roger Peters

Roger Peters
Board Member
for VOTMA

cc: Supervisor Gorin
Tennis Wick
Blake Hillegas

December 14, 2022

To: Board of Zoning Adjustments (BZA) County of Sonoma

Blake.Hillegas@sonoma-county.org

From: Chris Koch, Kenwood

Re: PLP05-0009 VJB-Revised Supplemental MND BZA Hearing 12-15-2022

I am writing to express my support for the comments VOTMA submitted with respect to this matter, and to address the issue of VJB's argument that the interim reduction in the daily guest limit of 313 to 252 is somehow unwarranted and unfair.

During BZA's last public meeting on the VJB application, the question was raised about what level of service should be permitted before VJB complies with the conditions of approval. To allow them full capacity operation before the improvements are made deprives the community of the benefit of the improvements. It also means there would be little incentive for VJB to be an active proponent of obtaining compliance with these conditions as expeditiously as possible. Furthermore, this applicant has shown a very pronounced pattern of delays over the years to operate the way it has in a manner inconsistent with its use permit, justifying the creation of an active compliance incentive.

BZA's decision for the interim reduction until the improvements are made is a sound one.