

**BOARD OF ZONING ADJUSTMENTS MEMORANDUM**

**Date:** December 15, 2022

**Item:** No. 2 – at or after 1:20 p.m.

**From:** Blake Hillegas, Project Planner

**Subject:** Continued hearing on application for Use Permit Modification, File No.: PLP05-0009; VJB Vineyard and Wine Cellars

**CEQA Review:** Revised Subsequent Mitigated Negative Declaration dated April 26, 2022 (“RSMND”)

**Prior hearing date:** June 2, 2022

**Property Owner:** Henry R. and Shelby L. Belmonte, Trustees of Henry R. and Shelby L. Belmonte AB Living Trust; Vittorio Belmonte and Maria G. Belmonte, Trustees of Belmonte Family Trust Cellars

**Applicant:** Henry Belmonte, VJB Vineyards and Cellars LLC

**Address:** 60 and 75 Shaw Avenue

**Supervisory District:** 1

**Recommended Actions:**

- Re-open public hearing on the April 26, 2022\_RSMND and application for modification of Use Permit PLP05-0009, for the limited purpose of taking public comment on the revised draft resolution and conditions of approval. Close the public hearing.
- Approve a revised draft resolution adopting the revised Subsequent Mitigated Negative Declaration dated April 26, 2022, adopting conditions of approval, and approving the Use Permit Modification subject to the modified conditions of approval.

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**Prior Board of Zoning Adjustments Hearing and Direction to Staff:**

During a public hearing held on June 2, 2022, Permit Sonoma staff recommended that the BZA conditionally approve the VJB Use Permit Modification, File No. PLP05-0009, with a limit of 313 wine tasting and food service guests per day. The recommended guest limit number was based on the capacity of the proposed expansion of the on-site septic system. Staff also recommended strict performance timelines for implementing other Conditions of Approval. The staff report and all attachments for the June 2 hearing are attached to this item. The BZA opened and closed the public hearing and expressed concern with allowing the applicant to continue to operate at full capacity before the proposed septic system expansion, parking lot, and road improvements are completed, among other issues raised. Based on its deliberations, the BZA took a straw vote 4-0-1 to approve the item, subject to modifications, and gave direction to staff to revise the resolution and conditions of approval and return with revised documents for final action.

The BZA directed staff to add and revise conditions to address the following:

1. Limit wine and food service customers to 252 people per day until the following improvements are completed:
  - a. implementation of the parking restrictions on Shaw Avenue, as provided in the conditions of approval dated December 15, 2022;
  - b. construction of a right turn lane and other required improvements on Shaw Avenue as provided in the conditions of approval dated December 15, 2022;
  - c. construction of a new parking lot and retrofitting noise fencing as provided in the conditions of approval dated December 15, 2022; and
  - d. installation of the new septic system as proposed by applicant and as incorporated into the conditions of approval dated December 15, 2022.

*Discussion: Conditions 60 and 61 have been modified to address the temporary limitation of 252 guests per day until the specified improvements are completed and allowing 313 guests upon completion of improvements.*

2. Require a compliance monitor at each entrance gate to monitor and manage patron activity and parking and circulation during all business hours.

*Discussion: The BZA directed that a condition be added requiring 2 staff monitors (one at each gate) to manage parking and circulation and patron activity. The applicant opposes this requirement, at least to the extent that it requires adding additional staff or contractors on site, which would be costly and potentially require recirculation of the Subsequent Mitigated Negative Declaration and further delay. Staff has added Condition of Approval 66, which clarifies that existing staff shall be stationed as monitors at each patio gate to monitor and assist with parking, circulation, and pick-up/drop off activity on-site and within the surrounding affected area and ensure maintenance of safe and legal parking during business hours.*

3. Provide monthly reporting to Permit Sonoma on the number of daily wine and food service guests;

*Discussion: Condition 62 has been added to require the applicant to monitor and limit daily food and wine service guests to 252 (313 upon completion of improvements), keep verifiable records, and provide the monitoring data to Permit Sonoma Planning staff monthly to demonstrate compliance with limitations. See discussion below regarding staff's request for clarification on the BZA's intent for this condition.*

4. Maximize permeability in the new parking lot;

*Discussion: Condition of Approval 75 has been modified to require that the final parking lot design incorporate surface permeability to the maximum extent feasible and in accordance with Low Impact Design standards and the County grading ordinance.*



5. Update the floor plan to eliminate reference to a residence and overflow seating in upstairs of wine tasting/market building;

*Discussion: Condition of Approval 64 had been updated to require removal of the plan reference to residential use and the guest seating areas in the upstairs of the market/tasting building.*

## **Applicant Correspondence**

Subsequent to the June 2, 2022 hearing, in which the BZA took public comment, closed the public hearing, straw voted to conditionally approve the project subject to modified conditions of approval, and directed staff to return with revised conditions of approval and resolution reflecting the BZA's direction, County Counsel and staff received correspondence from the applicant's attorney Erin Carlstrom (June 14, 2022) and its planning consultant, Jean Kapolchok (July 1, 2022). Both letters assert, among other issues, that the interim requirement to reduce daily visitors to 252 persons per day is unreasonable. Ms. Carlstrom requested that the BZA re-open the public hearing to allow VJB and the public an opportunity to respond to the changes in the draft conditions of approval that were directed by the BZA through its straw vote. The correspondence is attached and summarized below and followed by a staff response.

### *Erin Carlstrom Letter*

The written correspondence from Erin Carlstrom on behalf of her client VJB (attached) indicates that while some of the BZA's requests can be accommodated, others, like hiring a third-party monitor or additional staff to act as monitors, would impose considerable expense and could have environmental impacts that were not contemplated by the existing environmental review documents, thus requiring recirculation and substantial delay. It is further suggested that the County lacks legal authority to impose the daily 252-guest cap absent evidence of the existing septic system's failure. The letter alleges that the BZA's revisions to the conditions of approval would drastically infringe on VJB's economic beneficial use of the property, lacks the necessary legal nexus, and would result in a taking of a vested right. The letter further suggests that the economic loss could go on for approximately three years, based on time required for plan preparation and potential delays in permitting. As noted above, the applicant requests that the public hearing be re-opened for the purpose of presenting and deliberating on these issues.

### **Staff Response:**

Reopening Public Hearing – In reviewing the public hearing record for this item, the record is not clear regarding the BZA's rationale for limiting daily guests to 252 per day until improvements are completed. In addition, the applicant was not given an opportunity to respond to the interim visitor cap and other changes to the conditions of approval that were directed by the BZA, because the public hearing was closed at the time of its deliberations. Therefore, staff recommends that the BZA re-open the public hearing for the purpose of receiving comments from the applicant and public regarding the revised draft resolution and conditions of approval.

Guest limits – Staff requests that the BZA provide additional guidance for the record regarding the basis for its decision to limit daily food and wine tasting guests to 252, until required improvements are completed. It is not clear from the June 2, 2022 hearing video or the materials that were before the BZA



on June 2 why the BZA chose the specific limit of 252. Because a 252-person limit would reduce the existing number of daily visitors to VJB until the required improvements are completed, and because as the applicant's representatives noted the amount of time necessary to complete those improvements is not entirely within its control, it is particularly important for the BZA to elaborate on the basis for its determination to limit daily visitors and its selection of 252 people per day as the interim limit. It is equally important for the applicant and the public have an opportunity to comment on the proposed limit and to re-open the public hearing to receive comments from the applicant and public regarding the 252-person interim guest limit.

*Jean Kapolchok Letter*

The written correspondence from applicant's consultant Jean Kapolchok (attached) focuses on the strict timelines in the draft conditions of approval for completing the required parking restrictions and road, parking lot, and septic improvements. It is noted that even with the strict timelines, implementation is not completely within the applicant's control due to the Permit Sonoma plan review process. The applicant believes it could take up to three years before they could complete the improvements and cites Permit Sonoma's website performance data indicating over a year for plan check comments on road improvement plans.

The Kapolchok letter suggests that is unnecessary to establish the 252-guest capacity limitation until all the improvements are completed, when certain improvements such as noise attenuation, restrictions on parking and septic improvement could be accomplished more quickly to address compatibility. Specific suggestions are discussed further below for BZA consideration.

1. Renewal of septic permit application immediately rather than within 90 days as previously agreed and install as soon as possible upon issuance.

**Staff Response:** The applicant had previously applied for a new septic permit, but the plan review expired as the permit issuance was delayed pending approval of the revised use permit. There is currently nothing preventing the applicant from submitting a new septic permit application and prioritizing construction as soon as the permit is issued, but a new application has not been filed at this time. Current draft conditions of approval require submittal of an application within 90 days and installation within 6 months of issuance. The applicant believes they could complete the submittal, plan review, and installation within a year, although an application has not been filed at this time.

2. Retrofit sound fence at parking lot and allow parking lot to be used in the interim until grading plans are prepared and issued and the parking lot is fully improved.

**Staff Response:** The applicant suggests that the existing parking lot fence could be acoustically retrofitted immediately and that the parking lot could then be used before it's fully improved. The fence could be retrofitted at any time because a building permit is not required. However, staff does not recommend that the BZA allow use of the parking lot before the parking lot is fully improved, the required pedestrian and vehicular circulation improvements installed, and on-street parking restrictions are implemented. Coordinating development of the parking lot with other required improvements will ensure that the parking lot design will meet landscape, parking, and circulation requirements, that drainage and access improvements are coordinated with the Shaw

Avenue improvements and on-street parking restrictions, and that customers using the parking lot have improved access to the food service operation.

3. The applicant indicates that an application for parking restrictions on Shaw Avenue could be filed within 30 days instead of within 60 days and that parking restrictions (no parking signs) can be implemented as soon as approved by the Board of Supervisors.

**Staff Response:** Under the current conditions, an application for on-street parking restrictions could be filed immediately. If a no parking ordinance on Shaw Avenue is approved by the Board of Supervisors, staff agrees that implementation of no parking signing ahead of other road improvements may be feasible. However, staff believes the no parking signs are integral to the overall Shaw Avenue improvement plans, including lane striping, pedestrian crossing, turning movement improvements, drainage improvements, and the driveway entry to the proposed parking lot.

### Attachments

Att 1 PLP05-0009 Draft Conditions of Approval

Att 2 PLP05-0009 Erin Carlstrom, Clement Fitzpatrick & Kenworthy Letter June 14, 2022

Att 3 PLP05-0009 Jean Kapolchok, J. Kapolchok + Associates Letter July 1, 2022

Att 4 PLP05-0009 Draft Resolution

Att 5 PLP05-0009 May 26, 2022 Board of Zoning Adjustments Staff Report and Materials

