

MEMORANDUM

Date: 2/25/10

To: Don Bussey

From: Samantha Haschert

Re: 07-0507

Agenda Date: March 5, 2010

Agenda Item #: 0.1

Agenda Time: After 8:30 AM

This application was originally brought before the Zoning Administrator on April 4, 2008 and was continued to April 18th because the Property owner could not attend the hearing. On April 18th, the application was again continued by the Zoning Administrator with direction to staff to review operations at the winery to ensure compliance with the existing permit conditions. The application was brought before the Zoning Administrator on February 5th and was continued to February 19th based on a lack of funds in the account. On February 19th, the item was heard at a public hearing. The staff recommendation was for denial of public wine tasting component of the project and, after listening to public testimony, the Zoning Administrator continued the item with direction to staff to revise the findings and conditions to allow for public wine tasting to occur on each Saturday of every month with expanded and clarified operational conditions of approval.

Conditions of Approval

At the February 19th public hearing, the Zoning Administrator distributed a draft list of conditions of approval to staff, the applicant and the property owner. The conditions of approval presented today are generally the same as those proposed by the Zoning Administrator with added specificity where determined to be appropriate. Among others, the conditions include limitations of hours for wine production, events, public wine tasting, outdoor wine tasting, and private wine tasting; the type of live music allowed on site during events; the number of events permitted per year and per month; and the amount of wine produced per year.

The public wine tasting component of the permit is proposed to expire after one year, at which point the property owner will be required to apply for a Permit Extension which would be processed as an Administrative level permit with public notice. Analysis of the Extension would include a review of any complaints submitted to the County Code Compliance Division throughout the year of operation and a review of neighbor comments to review impacts. An extension of the public wine tasting component of the subject permit could be denied or extended for any period of time determined applicable by the Planning Department at that time.

Staff is also recommending that attendance at events, public wine tastings, and private wine tastings is limited by the number of vehicles allowed on site at any one time rather than by the number of guests themselves. This change would allow for more effective enforcement of guest limitations, given that it will be easier to observe an abundance of vehicles parked on site rather than by counting the number guests. Additional conditions are included which prohibit shuttling of guests from off-site and limit "wine touring vehicles" such as busses, vans and limousines to those of a 10 person maximum capacity.

Finally, staff is not recommending additional conditions regarding the prohibition of weddings, dinner parties, or other parties associated with the winery where the event would comply with all of the recommended operational conditions for limited hours, music, food service, and vehicles on-site, the reason being that there is no clear distinction between a party and an event. Should the Zoning Administrator wish to include a condition prohibiting parties, dinner parties and weddings, staff recommends that associated conditions regarding outdoor tastings and evening events are further restricted as well.

Findings

Findings for approval of public wine tasting are attached. Staff was able to make all of the findings for approval of public wine tasting one day per week and an increase in the number of attendees for 2 events based on the results of a traffic study submitted by the applicant and concurrence by the County Department of Public Works Road Engineering Section which indicate that the resulting additional traffic would be insignificant and also based on the results of a Noise Study which indicates that the noise level at the property lines is in compliance with the limitations in County Code Section 13.10.637 and the County General Plan Noise Element.

Conclusion

As requested, the findings and conditions have been prepared to allow for public wine tasting to occur on every Saturday of every month and the project is again before you today with a staff recommendation for approval of application number 07-0507 based on the revised attached conditions and findings and certification that the project is exempt from further environmental review under the California Environmental Quality Act.

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made for the recognition of the entertainment room conversion to a wine tasting room, in that the project is located in an area designated for small scale commercial agricultural uses and no new construction proposed. The existing structure encompasses two uses: a commercial winery and a single family dwelling. The new wine tasting room is a part of the commercial winery use and will require a building permit to ensure that it complies with commercial building and accessibility standards. Additionally, the conversion of the room does not increase the number of guests permitted on site and no additional construction is proposed; therefore, recognition of the change in use will not result in inefficient or a wasteful use of energy and will not be materially injurious to properties or improvements in the vicinity.

~~This finding cannot be made for the proposal to allow public wine tasting on Saturdays and Sundays in that although the property owner is proposing to limit the number of guests during public hours to 20 on site at any one time by remotely closing the driveway gate at the terminus of Silver Mountain Drive, it would be infeasible for the winery staff to enforce this and it could create a vehicular hazards on Miller Hill Road. At the closed gate, vehicles may attempt to turn around or gather while waiting for another group to leave the premises which would be hazardous to vehicles traveling along Miller Hill Road; therefore, the conditions under which the expanded use would be operated and maintained could be detrimental to the health safety and welfare of persons residing in the neighborhood and the general public. Additionally, evidence in the form of neighborhood public comment has been submitted to prove that the existing use is a nuisance to neighboring residences both in the form of noise and traffic impacts. An expansion of the commercial winery would exacerbate an existing nuisance which would be detrimental to the welfare of the neighboring residents.~~

The project is located in an area designated for small scale commercial agricultural uses. Based upon the evidence submitted, the proposed additional public wine tastings, as conditioned, will not be detrimental to the health, safety or welfare of persons residing or working in the neighborhood or the general public in that an increase in public wine tastings without an appointment between the hours of 11 pm to 5 pm on every Saturday of each month with a maximum of 10 vehicles on site at any one time and allowing two events to have up to 25 vehicles onsite at any one time will not create excessive traffic on Miller Hill Road, Miller Cut-Off, or Silver Mountain Drive and will not conflict or impact vehicular site distance. Further, based upon the evidence and as conditioned, noise from the winery will not be detrimental or a nuisance to the neighborhood. (Amended at ZA 02/19/10)

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made for the recognition of the entertainment room conversion to a wine tasting room, in that no new construction is proposed that could conflict with the development standards of the Residential Agriculture (RA) zone district and the use of the property as a small-scale commercial winery and vineyard is consistent with the purpose of the RA zone district in that the winery will remain a small scale commercial agricultural use with 12 events per year and unlimited private wine tastings

and limited number of vehicles on site per appointment or event. These limitations are based on the individual location and merits of the winery, which is consistent with County Code Section 13.10.637 (Wineries Ordinance).

~~This finding cannot be made for the proposal to allow public wine tasting on Saturdays and Sundays with a maximum of 20 people on site at any one time in that the addition of public wine tastings on Saturdays and Sundays would result in an additional 104 days of wine tasting at the facility and would open the facility to the public on these days. Allowing public wine tasting on the weekends in addition to 12 events each year and unlimited private wine tasting appointments, would increase the intensity of the winery use beyond that of a small-scale commercial use that is in conjunction with a primary residential use of the property which is not in compliance with County Code Sections 13.10.321 (a) and (b) (Purposes of the Residential and Residential Agriculture zone districts).~~

As conditioned, the project complies with the purpose of the Residential Agricultural district in that residences in the area are protected from noise, illumination, dust, odor and traffic congestion. (Amended at ZA 02/19/10)

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made for the recognition of the tasting room conversion in that the existing commercial agricultural use is consistent with the use and density requirements specified for the Rural Residential land use designation in the County General Plan. As conditioned, the use will be compatible with the neighborhood.

~~This finding cannot be made for the proposed expansion of the winery to allow public wine tasting on Saturdays and Sundays in that the General Plan objective of the Rural Residential designation is to maintain the rural character and restrict more intensive development of these areas. The General Plan provides a program, which is implemented by the Residential Agriculture zone district, to permit "some agricultural uses such as limited horticulture, crop raising, and livestock raising..." The proposal to expand events to include an 'open to the public' option at a commercial winery that is already permitted to host 12 large events per year and hold private wine tastings would intensify the use beyond the scope intended by the General Plan.~~

The proposed agriculture use, as conditioned, is consistent with the use and density requirements specified for the Rural Residential (R-R) land use designation in the County General Plan. Increasing the number of participants for two events and opening the winery to the public for about 12 hours for a maximum of 10 vehicles onsite at one time is consistent with the rural character of the area. (Amended at ZA 02/19/10)

A specific plan has not been adopted for this portion of the County.

4. That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made for the recognition of the room conversion in that the room already exists; no structural modifications or additions are proposed, and recognition of the tasting room conversion does not intensify the use of the site, the number of events permitted or the amount of wine produced annually at the site; therefore, it will not overload utilities or increase the level of traffic on streets in the

vicinity.

The proposed public wine tastings, two days per week is expected to generate a maximum of 17 additional trips per day. As conditioned, the winery would only be open to the public Saturdays (11 pm to 5 pm) with a maximum of 10 vehicles on site at one time; therefore, based upon the traffic report and input from DPW, the expected level of traffic generated by the project is anticipated to be less than significant and such an increase will not adversely impact existing roads and intersections in the surrounding area. Increasing the maximum attendance for two events will have a minimal affect on traffic in the area. (Amended by ZA 02/19/10)

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made to recognize the tasting room conversion in that the room already exists and no structural modifications or additions are proposed and that the room recognition will not intensify the commercial winery use of the property; therefore, the structure will remain as currently exists which harmonizes with the existing and proposed land uses and physical design aspects in the vicinity.

~~This finding cannot be made for the proposal to allow public wine tastings on Saturdays and Sundays in that evidence has been submitted by neighbors which concludes that the current commercial operations at the winery are a nuisance to neighbors in terms of noise and traffic; therefore, an intensification or expansion of the existing commercial use would not create a use that complements and harmonizes with existing land uses in the vicinity.~~

The increase of the number of participants for limited events and the public wine tasting for up to 10 vehicles at a time is consistent with the rural land use character of the surrounding area and will harmonize with existing and proposed land uses in that there are conditions of approval included that regulate noise, number of visitors, hours allowed and outdoor uses. (Amended at ZA 02/19/10)

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding is not applicable as there is no new development proposed.

Conditions of Approval

Strikeouts and italics identify amendments at ZA 2/19/10

Exhibit A: Project Plans, 2 sheets prepared by ACS Architects, dated 9/22/09 and 1 sheet (Job Copy (author and date illegible)).

- I. This permit recognizes the conversion of an Entertainment Room to a Wine Tasting Room and authorizes the following ~~amended~~ operational conditions which shall ~~to amend 79-914-U and shall supersede all previous permits 93-0123 and 99-0244 conditions.~~ *This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/ owner shall:*
 - A. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.
 - B. Obtain a Building Permit from the Santa Cruz County Building Official ~~if required for the entertainment room to~~ *Tasting Room* change of occupancy.
 - C. Obtain a Grading Permit if required for improvements to the turnouts on Silver Mountain Drive.
 - D. Any outstanding balance due to the Planning Department must be paid prior to making a Building, Grading, or Demolition Permit application. Applications for Building, Grading, or Demolition Permits will not be accepted or processed while there is an outstanding balance due. *A positive balance is required.*
 - E. Meet all requirements and pay any applicable fees of the County Fire District (CalFire).
- II. Operational Conditions
 - A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
 - B. *The processing of grapes for the production of wine on site shall comply with all provisions of Section 13.10.637 (Wineries) of the County Code. This shall include but not be limited to the following:*
 1. *The annual production capacity shall not exceed 20,000 gallons; and storage of wine shall be limited to wine made (as defined by the Bureau of Alcohol, Tobacco and Firearms) on the premises.*
 2. *All requirements of the County Health Department shall be met.*

3. *All regulations of the local fire department or County Fire Marshall shall be met to insure adequate water availability and other conditions for fire protection.*
 4. *Outside operating hours of the winery shall be limited to 7:00 a.m. to 7:00 p.m. except during the harvest season (typically mid-August to mid-November). During the harvest season, the outside operating hours of the winery shall be limited to 7:00 a.m. to 10:00 p.m.*
 5. *The sound schedule limitations contained in County Code Section 13.10.637 shall apply.*
 6. *Grape Residue Disposal. Grape residue shall be disposed of in a manner consistent with the fly and vector control requirements of Environmental Health.*
- C. *The property owner shall maintain the vegetation at the Miller Road Cutoff – Silver Mountain Road intersection so that the line of sight complies with DPW Design Criteria Standards and is not obstructed.*
- D. *Private wine tasting is permitted by appointment only. There shall be a maximum of ten (10) vehicles on the premises at any one time during private appointments, exclusive of employee vehicles. Drop off/shuttling of guests is not permitted. Private tastings are limited to 11:00 a.m. and 5:00 p.m. on days when no public tasting or event is scheduled.*
- E. *Public wine tasting is allowed on each Saturday of each month. There shall be a maximum of ten (10) vehicles on the premises at any one time, exclusive of employee vehicles. Drop off/shuttling of guests is not permitted. Public tasting hours are limited to 11:00 a.m. to 5:00 p.m. No private tastings or events (other than Passport or Vintners events) are permitted on public tasting days. If a winery event is scheduled on a Saturday, the winery shall be closed for public tasting on that day. Public tasting is permitted for one year from the effective date of this permit. Prior to permit expiration, the property owner shall apply for a Level 4 permit extension in order to re-activate the public tasting component of this permit. The permit extension shall review all correspondence received as a result of project noticing and any complaints received by the Planning Department throughout the effective year. Compliance with conditions of approval and the lack of complaints are factors that shall be considered for any extension of time to the public tasting. Failure to submit an application for an extension to the public wine tasting component of this permit prior to the below stated expiration date shall void the entitlement.*
- F. *The winery is permitted to participate in 12 winery events per year.*
1. *Each day of an event is considered a separate event, even if the days are consecutive. Vintners Festivals are two days per year and therefore count as two events.*
 2. *Events must end and all caterers, guests and staff must leave the premises by 7:00 pm, except as provided in condition II.F.7 below.*

3. A maximum of two (2) wine related events per month are permitted.
 4. *Events are limited to the hours of 11:00 a.m. to 6:00 p.m.*
 5. *A maximum of 25 cars are permitted on site for the Vintners Festival events (2 days per year) only, including employee vehicles. All other events, including Passport Days, are limited to a maximum of 10 vehicles on site at any one time, exclusive of employee vehicles. Drop off/shuttling of guests is not permitted.*
 6. *Events may not be held on days when public tasting or private tasting is scheduled.*
 7. *Two of the twelve permitted wine related events per year may end at 9:00 p.m. All caterers, guests and staff must leave the premises by 9:30 pm and no outdoor tasting or gatherings are permitted after 6:00 p.m. for these evening events.*
 8. *Outdoor wine tasting is permitted within the amphitheatre between the hours of 12:00 p.m. and 4:00 p.m. during the Passport Day events and Vinters Festival events only. Otherwise, all wine tasting shall occur within the wine tasting room. Other than the allowed wine tasting time, use of the amphitheatre area for wine consumption (not tasting) by individuals or "picnics" is not allowed by the permit.*
 9. *The four Passport events (4 days per year) and Vintners Festival (2 days per year) account for 6 of the 12 permitted events.*
- G. All requirements of the County Fire Department shall be *installed* and maintained. *This shall include, but not be limited to road width, road grade, road surface and water availability.*
- H. Guest parking for winery events and private appointments must be restricted to those spaces marked on Exhibit A. All guests and employees shall park onsite in an approved parking space. Drop off/shuttling of guests is not permitted. During events, a winery employee shall be designated to monitor onsite parking to ensure that no vehicles are parked in the driveway or in spaces that are not specifically designated on Exhibit A and that shuttling is not occurring.
- I. Provide and maintain required off-street parking for a maximum of 25 cars, including 2 accessible parking spaces (as per Exhibit A) and an additional 4 employee only parking spaces. The Vintners Festival may occupy a maximum of 25 parking spaces while all other events, private wine tasting appointments, and public wine tasting days may utilize a maximum of 10 approved parking spaces. No additional paving shall occur on site to create parking spaces. All permitted parking spaces shall be clearly striped and shall be open and available while the winery is open. 10 of the approved parking spaces shall not be used as outdoor storage or equipment parking areas at any time. The additional 15 parking spaces that are used only during the Vinters Festival Events may be used for outdoor storage when not in use.
- J. *All tasting room servers shall have successfully completed the "Lead Training" course offered by the Department of Alcohol & Beverage Control.*

- K. *The property owner shall ensure on a continual basis that wine tour companies are not permitting buses, limousines, or vans with a capacity greater than 10 passengers to the winery.*
- L. *The Silver Mountain Winery website shall clearly show the following statement on the main page:*
"The only access to Silver Mountain Winery is via rural, narrow, winding, mountain roads which have blind corners and limited turnouts; therefore, the use of limousines, vans, RV's, buses, or other similarly sized vehicles is strongly discouraged."
- M. *At least one week prior to each event, signage for the event must be clearly posted at the terminus of Silver Mountain Drive, clearly visible from Miller Hill Road. Signage shall not exceed two square feet, it shall not interfere with vehicular site distance, and it shall be located completely on the subject property. Signage shall indicate the name, date and time of the event to notify neighbors of the increase in public traffic and noise on those days.*
- N. *Non-amplified outdoor music is permitted within the amphitheater between 12:00 p.m. and 5:00 p.m. only during: the four (4) Passport Day events, the two (2) Vintner's Festival events, and during any other two (2) onsite events; otherwise, no outdoor music of any kind is permitted. Public address systems are not permitted and amplified music (radio, "DJ's, etc) of any kind is not permitted both within the tasting room and outside. Live non-amplified music and sound (i.e. radio) is allowed within the tasting room during all wine related events, private tasting and public tasting times.*
- O. *Outdoor wine tasting is permitted within the amphitheatre between the hours of 12:00 p.m. and 4:00 p.m. during the Passport Day events and Vinters Festival events only. Otherwise, all wine tasting shall occur within the wine tasting room. Other than the allowed wine tasting time, use of the amphitheatre area for wine consumption (not tasting) by individuals or "picnics" is not allowed by the permit.*
- P. *Only wine produced on the premises shall be served. Service of wine produced off-site is expressly prohibited.*
- Q. *Cooking facilities are prohibited, excepting those exclusively for the use of the single family dwelling. No commercial food preparation shall be allowed on site.*
- R. *Directional signage shall be installed on Soquel San Jose Road which directs traffic to Miller Cut Off. Signage and installation shall comply with all requirements of the County Department of Public Works Road Engineering.*
- S. *Signage shall be installed on Miller Hill Road and Miller Cut Off at the terminus near the intersections with Soquel San Jose Road to caution the winding narrow roads. Signage and installation shall comply with all requirements of the County Department of Public Works Road Engineering.*
- T. *In the event that the winery should cease production of wine, then all wine tasting and wine related events shall immediately cease.*

- III. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.
- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
1. COUNTY bears its own attorney's fees and costs; and
 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note:

1. The public wine tasting component of this permit expires one year from the effective date listed below unless an application for a permit extension is made prior to the expiration date. Failure to submit an application for a permit extension prior to the expiration date listed below will void the public wine tasting approval described in this development permit, unless there are special circumstances as determined by the Planning Director.
2. All other approvals described in this permit shall expire *three* years from the effective date listed below unless a building permit(s) is obtained for the primary structure (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to obtain a final building permit and to complete all of the construction under the

building permit resulting in the expiration of the building permit will void the development permit, unless there are special circumstances as determined by the Planning Director.

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Don Bussey
Deputy Zoning Administrator

Samantha Haschert
Project Planner

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning