



# **Sonoma County Board of Zoning Adjustments**

## **MINUTES**

Sonoma County Permit and Resource Management Department  
2550 Ventura Avenue, Santa Rosa, CA 95403  
(707) 565-1900 FAX (707) 565-1103

Date: April 27, 2017  
Meeting No.: 17-04

### **ROLL CALL**

Larry Reed  
Paula Cook  
Cameron Mauritsen  
John Lowry  
Dick Fogg, Chair

### **STAFF MEMBERS**

Jennifer Barrett  
Jennifer Faso  
Julia Smith, Secretary  
Jeff Brax, Chief Deputy County Counsel

**1:00 PM** Call to order and Pledge of Allegiance.

## **BOARD OF ZONING ADJUSTMENTS REGULAR CALENDAR**

Item No.: 1  
Time: 1:05 PM  
File: UPE15-0115  
Applicant: Omar and Giovanna Mueller  
Owner: Same  
Cont. from: March 16, 2017  
Staff: Jennifer Faso  
Env. Doc: Categorically Exempt  
Proposal: Request for a Use Permit to add retail sales of alcohol (off-premise) to an existing retail cheese shop on a 0.28 acre parcel.  
Location: 380 Bohemian Highway, Freestone  
APN: 073-120-032  
District: 5  
Zoning: CR (Commercial Rural), HD (Historic District), SR (Scenic Resources)

### **Staff Presentation**

Commissioner questions.  
Commissioner Reed asked about the zoning discrepancy. Deputy Director Barrett indicated that there may be inconsistency in the past regarding zone changes through the General Plan updates, but the current zoning is Limited Commercial.

Public Hearing opened.

Giovanna Mueller, Applicant and co-owner with Omar Mueller, wants to expand their product offering to include hard cider and local wines. They hope to establish their business as an agro-tourist destination. They spent two years upgrading the building and updating the septic. They have deli-style service and it is not the type of business where customers congregate. They are not asking for physical expansion. They sell locally produced cheeses and want to add wines and cider. There is community support, and the Fire Department is aware of their plans. Mueller asked who they are harming, what the motivation behind the opposition is, and why this project was being singled out. She wondered how they could be prevented from selling local wines and ciders when it serves the local community and growers. Mueller asked if all businesses in Freestone are held to these standards.

Eric Koenigshofer, Freestone, stated that the General Plan LC (Limited Commercial) designation of this parcel on the land use map is incorrect. He believes that during the 1989 GP Update, the zoning was misapplied to Freestone. He displayed a map showing the error. There were five existing commercial properties in 1989 in Freestone. Additional commercial uses currently in place in Freestone have been incorrectly allowed based on the documents presented. He asked that this error be curtailed by denying the request.

Commissioner Fogg asked if it is in the BZA's jurisdiction to take in consideration that there may or may not have been an incorrect interpretation of the zoning, and Counsel Thomson responded that the BZA needs to consider whether the Use Permit is consistent with zoning and health and safety.

Marylee Wynan, Freestone, lives within 300 feet of the cheese shop, and is included in the 22 Freestone residents who submitted letters of opposition to the permit. She questioned whether the staff report is unbiased and how the Conditions of Approval will be met, and how staff would verify that the business is compliant. She asked if staff can correct the technical corrections indicated by Mr. Koenigshofer, and the ramifications if this is not done.

Scott Siedman, Freestone, also lives less than 300 feet from the proposed site. The technical correction must be done to be consistent, and staff should defend and implement the General Plan.

Ernie Carpenter, Sebastopol, stated that the issue is not with the shop, just the expansion. He expressed concern that the sewer system is adequate. Parking is limited and the expansion of this use permit does not match the parking.

Jed Wallach, Sebastopol, stated that the proposal will erode the quality of Freestone, and is not compatible with the community. When she first came to Freestone there were six commercial business. There are three remaining. Wallach wants to keep Freestone special.

Dee Swanhuysen, Western Sonoma County Rural Alliance, stated that the technical corrections need to be fixed. No retroactive changes should be made to existing businesses, but the standards need to be applied.

Judith Stone, Freestone, next door neighbor, supported expanding the permit. She stated that Freestone has a long standing tradition to support local businesses, including Air B'Bs. The Use Permit will not change the footprint. There are usually only 1 or 2 cars parked there, and she has never seen more than five or six in the busy season. She never sees people picnicking across the street, and most locals use the park. The largest footprint and parking problem in Freestone are from the Bakery and Osmosis. Stone supports those also. Stone felt it was ironic to target the cheese shop, adding that the applicant's improvements have raised the property values in the area.

Ann Hadon, Freestone, expressed sadness that the community has been ripped apart, comparing the issue to a "cheese and red herring," "much ado about nothing," and "Freestone Drama." Their proposal is not a novel idea. The matter is small in comparison to upcoming changes.

Judith Smith, Freestone, said she had watched the progress of the reconstruction of the building that houses the Cheese Shop and has been impressed. She supported their request to support local businesses, and added that the owners are very hospitable people that support the local economy and community.

Jillian Stocks, Sebastopol, supported both the bakery and the cheese shop, as it adds to the town's charm. She would love to be able to go there and purchase a bottle of wine to complement the cheese. The owner, Omar, educates visitors about local agri-business.

Mark Mellander, Freestone resident for 20 years, commented that the area has gone from rural to a major wine growing region and business is creeping into Freestone. There is already a winery in the area, the Freestone store sells wine, and more commercial development will be intrusive to the peace and quiet of the area.

Edgardo Rabara, Freestone, agreed. He asked to respect the plan that is in place. He had to abide by the rules when he built his house. Alcohol sales seem a little inappropriate for the area.

Omar & Giovanna Mueller, on rebuttal, stated that their business in Freestone is small, and the expansion of sales does not change that. They have a fully vested use permit. The Phelps winery property has been for sale. The local store has been closed for a few months, so there have not been alcohol sales in the area for quite a while. Their live-work situation is very community oriented.

Public Hearing closed at 2:33 p.m.

#### Commissioner Discussion

Commissioner Lowry asked for clarification about what is included in the packet's conditions of approval. Staff Faso stated that they are a combination of relevant conditions from the previous Use Permit and they have been updated to addressing new issues and new Conditions. Commissioner Lowry indicated that there appears to be an inconsistency with the GP and maps, as brought up by Eric Koenigshofer, and was unsure how to proceed. Staff Faso stated that this ambiguity is not something staff can hold against the applicant.

Deputy Director Barrett added that the zoning has been brought into consistency with the General Plan. The general concern presented by opponents is whether the land use designation is appropriate for the Freestone area. This particular hearing is to decide if the request for expansion of the permit should be granted.

Commissioner Reed asked if, when moving forward in the planning process, there would be an opportunity for public input to mold the future of their town. Deputy Director Barrett said that if we were to create an area specific plan for the Freestone area, it would be a major engagement process.

Commissioner Reed wondered if moving forward with the permit would preclude others from applying in the future because of cumulative impacts. Staff Faso state that future applicants would have to go through the same process, review, and assessment.

Commissioner Cook asked whether the use permit or health permit has priority, and Staff Faso commented that it is the more restrictive permit has priority. Even though the Health Department may say the project can be run like a deli, if the conditions of approval of the Use Permit still apply.

Commissioner Fogg requested that the Board revisit the issues raised by Eric Koenigshofer. Deputy Director Barrett replied that the BZA could make a recommendation to the Board of Supervisors and that this may be addressed in the upcoming General Plan update. Commissioner Fogg asked that the request be included in the recommendation, and wondered if a moratorium on future commercial permits could be established until this correction is made. Deputy Director Barrett indicated that there are many finding to be made and steps to take to establish a moratorium. Since this was a different topic from the request at hand, she was uncomfortable with pursuing a moratorium at this time. Commissioner Cook commented that the issue bears further research and review.

Commissioner Lowry noted that in Condition 4, cooked food was being replaced by alcoholic beverage sales. It also appears that the seating benches would need to be removed. Deputy Director Barrett stated that if the Use Permit is approved, the conditions may be modified at the Board's discretion.

Commissioner Lowry asked if the Fire Department can comment on the Use Permit. Staff Faso said that they had been sent a referral and a copy of the hearing notice, and no response or concerns have been received. Commissioner Lowry commented that no on-site consumption seems vague, and asked if customers could walk across the street and consume their purchases at the park. Since the park belongs to the Fire District, perhaps they will have restrictions. Deputy Director Barrett stated that this Use Permit is specific to the property itself, and the BZA can't make a restriction regarding the other property. A condition could be added that states they may not advertise that park across the street as available for consumption.

Commissioner Lowry expressed concern about whether sanctions would apply if the applicant violates the conditions of their Use Permit. Commissioner Cook suggested adding in a review period in which to ensure

condition compliance. Deputy Director Barrett said that this review period could be added, and this is typically done with wineries and dog kennels.

Commissioner Cook stated it would be disingenuous to only consider the actual property and not consider the surrounding property, for people to drink off-site. Deputy Director Barrett repeated that the BZA can't say what is allowed or not allowed on someone else's property.

Commissioner Lowry again expressed concern about how the project might affect the Fire Department and suggested that their feedback be included in the condition compliance. Deputy Director Barrett replied that the Fire Department has control over their own property, and if they don't like the way it's being used, they can put up signage.

Counsel Thomsen stated that a condition for signage could be added to state that use of the Fire Department property is discouraged. Commissioner Lowry supported this. Commissioner Cook agreed that more feedback is needed from the Fire Department. Commissioner Mauritson replied that it says something about their interest when half the town of Freestone came to the hearing and no one from the Fire Department showed up.

Commissioner Lowry felt that the applicants need to demonstrate condition compliance, based on past violations of the conditions. Commissioner Cook concurred and asked for a strong recommendation that the Board relook at the zoning issues raised by Mr. Koenigshofer. Counsel Thomsen stated that the recommendation to the Board could not be added to the motion because it had not been part of the agenda, so it could not be tied to a motion for approval for the Use Permit. Deputy Director Barrett added that the BZA could direct staff to convey to the Board that adjustments to the General Plan Land Use policy is necessary, as well as your intention to pursue a moratorium on future commercial developments in the area.

**Changes to Draft Conditions:**

Condition 15 was added, which requires a review of the activities under the Use Permit one year after commencement of operations.

Action: Commissioner Lowry motioned to approve the Use Permit with modified Conditions of Approval. Seconded by Commissioner Cook and passed with a 5-0 vote.

Appeal Deadline: 10 calendar days

Resolution No.: 17-003

**Vote:**

Commissioner Reed	Aye
Commissioner Cook	Aye
Commissioner Mauritson	Aye
Commissioner Lowry	Aye
Commissioner Fogg	Aye

Ayes: 5

Noes: 0

Absent: 0

Abstain: 0

Minutes adopted June 29, 2017.