



County of Sonoma

State of California

Date: June 13, 2019

Item Number: _____

Resolution Number: _____

UPE15-0115 Jennifer Faso



4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Denying An Appeal, And Upholding the Board Of Zoning Adjustments Approval And Granting Request For A Use Permit to Omar and Giovanna Mueller, For Property Located at 380 Bohemian Highway, Freestone; APN 073-120-032.

Resolved, that the Board of Supervisors ("Board") of the County of Sonoma ("County") finds and determines as follows:

Section 1. Proposed Project and Procedural History

- 1.1** In December 2015, the applicants, Omar and Giovanna Mueller, filed a Use Permit application (UPE15-0115) with the Sonoma County Permit and Resource Management Department to allow off-site alcohol sales at an existing cheese shop (Freestone Artisan Cheese) ("Project") on a 0.28 acre parcel located at 380 Bohemian Highway, Freestone; APN 073-120-032; currently Zoned RR (Rural Residential) with combining zones of HD (Historic District) and SR (Scenic Resources); Supervisorial District No 5 ("Property").
- 1.2** The original use permit for Freestone Artisan Cheese (UPE11-0073) was approved on February 29, 2012, to allow the conversion of a single family dwelling to a retail cheese shop and to convert an existing detached garage into a single family dwelling, consistent with the Limited Commercial General Plan land use designation and Commercial Rural zoning designation in effect at the time.
- 1.3** In consideration of UPE15-0115, on April 27, 2017, Board of Zoning Adjustments conducted a public hearing and heard all relevant oral and written testimony and evidence presented or filed regarding this project. All interested parties were given an opportunity to be heard. At the conclusion of the public hearing, the Board of Zoning Adjustments closed the public hearing, discussed the Project and on a 5-0 vote found the Project to be exempt from CEQA and approved the Project.
- 1.4** Prior to and during the April 27, 2017, hearing, the Board of Zoning Adjustments heard concerns from community members that a conflict existed between the

Property's General Plan land use designation Limited Commercial and Commercial Rural zoning designation and General Plan Policy LU-12e, which restricts Limited Commercial land use designations in the Sonoma Coast/Gualala Basin Planning Area to parcels which had existing commercial uses at the time of the 1989 General Plan Update. The Board of Zoning Adjustments subsequently sent a letter to the Board recommending that the Board direct staff to initiate a General Plan Amendment and zone change.

1.5 On May 8, 2017, the appellants filed a timely appeal to the Board of Zoning Adjustments approval of the project.

1.6 On April 24, 2018, the Board of Supervisors approved a General Plan Amendment (Resolution No. 18-0149) and Zoning Ordinance (No. 6224) that changed the General Plan Land Use designation for the subject property from Limited Commercial to Rural Residential and the zoning designation from Commercial Rural to Rural Residential and declared the Freestone Cheese Shop a legal nonconforming use.

1.7 At the April 24, 2018, hearing, the Board of Supervisors acknowledged that the internal inconsistency between the General Plan land use designation and Policy LU-12e was not apparent to the reasonable property owner, that the applicants had invested considerable resources in improving and continuing their business, and that applying the new General Plan Land Use designation and zoning designation to the Project may raise concerns related to equity and due process. As a result, the Board of Supervisors included in Resolution No. 18-0149 and Ord. 6224 a pipeline provision which provides that "any real property [subject to the change in General Plan land use designation and rezone] for which a use permit application was submitted and approved by resolution of the Board of Zoning Adjustments prior to the effective date of [the] [r]esolution and for which a timely filed appeal [was] pending shall be entitled to proceed to a decision on such appeal on the basis of the General Plan land use designation and zoning for said real property in effect at the time of the Board of Zoning Adjustments action."

1.8 On April 30, 2019, in accordance with the provisions of the law, the Board of Supervisors held a public hearing, at which time all interested persons were given an opportunity to be heard.

Section 2. CEQA Compliance

The project is Categorical Exempt from CEQA pursuant to Section 15301 (Existing Facilities) of the State CEQA Guidelines, because the project is completely contained within an existing structure, no new interior or exterior construction is proposed, and the project involves no or negligible expansion of use. The project involves adding retail sales of alcoholic beverages to an existing cheese shop in 10 square feet of existing refrigerator space for off-premises

consumption only. Sales will happen within the existing facilities and no alterations to the facilities are needed to accommodate the alcohol sales. No exceptions listed under CEQA Guidelines Section 15300.2 apply, and there is no reasonable possibility that the project would have a significant effect on the environment.

Section 3. General Plan, Planning and Zoning Compliance

3.1 General Plan Consistency

Despite that the Property currently has a General Plan land use designation of Rural Residential, the Project is subject to the Limited Commercial General Plan land use designation, which was the land use designation in effect at the time the Board of Zoning Adjustments approved the Project by resolution. The project, as described in the application and as conditioned, conforms with the plans, policies, requirements, and standards of the of the LC (Limited Commercial) General Plan land use designation because retail sales of alcohol are allowed in the LC designation, the project will promote and market locally produced products, and because the addition of off-premises alcohol sales will not expand or intensify the existing commercial retail use.

Alternatively, the Project does not present General Plan consistency issues in that the proposal to add a minimal amount of alcohol sales for off-site consumption only to an existing shop that sells cheese and prepares beverages and food for take-out is a minor alteration to an existing legal non-conforming use.

3.2 Zoning Designation Consistency

Despite that the Property currently has a zoning designation of Rural Residential, the Project is subject to the Commercial Rural zoning designation, which was the zoning designation in effect at the time the Board of Zoning Adjustments approved the project by resolution. The project is consistent with the Commercial Rural zoning in that retail sales of alcohol is allowed with a use permit. The Project will convert 10 square feet of existing refrigerator space to retail alcohol sales and involves no physical alteration or expansion to the interior or exterior of the existing facilities on the project site.

Alternatively, the Project does not present base zone consistency issues in that Freestone Artisan Cheese is a legal non-conforming use and the addition of off-premises alcohol sales is consistent with Sonoma County Code Section 26-94-010. The current business sells local cheese and prepares beverages and food for take-out. The proposed alcohol sales would be limited to local beer, wine, and cider for off-site consumption only, and would be limited to 10 sq. ft. of existing refrigerator space. The Project involves no exterior or interior modification and the addition of minimal alcohol sales will not increase the intensity of the use. Conditions of approval require the applicant to install a sign that discourages the use of the community area across the street for alcohol consumption, further ensuring that the intensity of the use and

impact to the surrounding area is not increased.

3.3 The project is consistent the zoning code requirements for small alcoholic beverage retail establishments because the number of ABC licenses per capita within a one-half mile radius is less than the countywide average and the project is designed to reduce alcohol-related problems. The project is located within 700 feet of the Freestone Country Store, which is not currently in operation but holds a surrendered Type 20 ABC license. The project meets the zoning code criteria for an exception to the 1,000 foot separation requirement between small retail alcoholic beverage establishments because: 1) the project is outside an urbanized area as defined by the zoning code and the U.S. Census; 2) the area crime rate is 21.75 which is below the county average of 23.85; 3) the project site is 1.72 miles from the nearest school and there are no daycare centers, parks, or places of religious assembly within 1,000 feet, 4) the project site is located in a rural area where there is separation between the aforementioned uses of concern to avoid loitering and exposure to alcohol sales. The property across the street from the project site is owned by the Fire District and is sometimes used by the community for recreation, but is not designated as a park. Picnic use of the area is not considered loitering because it is for a specific recreational purpose, and exposure to alcohol sales is limited to locally produced beer, wine, and hard cider.

3.4 The Landmarks Commission reviewed and approved the exterior renovations authorized by UPE11-0073. The proposed project will not involve new construction or changes to the exterior of the existing structure, therefore review by the Landmarks Commission is not required.

3.5 The preparation of food and beverage for take-out is consistent with the conditions of approval of UPE11-0073. The existing wastewater disposal system and expansion area was approved for this use and has functioned properly without issue, and the proposed project is not anticipated to require additional wastewater disposal capacity. The property owner has been required to submit biannual monitoring information and is in compliance with the requirements of the monitoring program. The conditions of approval of UPE15-0115 would continue to allow limited food and beverage preparation by incorporating by reference the conditions of approval of UPE11-0073.

3.6 The establishment, maintenance or operation of the use for which application is made will 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 that support this finding include the following facts: 1) The current operating characteristics of the existing retail cheese shop will not change, there will be no change to the hours of operation, and no physical changes to the interior or exterior of the structure; 2) Alcohol sales are limited to off-premises sales and no on-site tasting, alcohol consumption, or events are proposed or allowed as part of this use permit; 3) There will be no change to the existing structure and conformance with the Freestone Historic District will be maintained;

4) The project site is not within 1,000 feet of schools, designated parks, daycare centers, or places of religious assembly; 5) The project will discourage use of the Fire District site for consumption of alcohol; and 6) The project provides four on-site parking spaces for customers, in exceedance of that required by Sonoma County Code Section 26-86-010.

Now, Therefore, Be It Further Resolved that based on the findings and determinations set forth in this resolution and information contained in the record of these proceedings the proposed project is approved, subject to the conditions of approval set forth in Exhibit "A" attached hereto and incorporated herein by this reference; and

Be It Further Resolved that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Clerk of the Board, 575 Administration Drive, Room 100-A, Santa Rosa, CA 95403.

Supervisors:

Gorin:	Zane:	Gore:	Hopkins:	Rabbitt:
Ayes:	Noes:	Absent:	Abstain:	

So Ordered.