

<p><b>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</b></p>
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**APPLICANT:**      Thao Xiong

**REPORT BY:**      John Jelcich

**APN:**              019-360-55

**PROJECT DESCRIPTION:**

Variance from required 350' cannabis cultivation setback from a neighboring residential dwelling.

**LOCATION:**              610 Bear Rock Road (Post Mtn area), Hayfork, (Exhibit A-1 & A-2)

**PROJECT INFORMATION:**

- A)    Planning Area:                              South Fork Planning Area
- B)    Existing General Plan Designation:      Rural Residential (RR)
- C)    Existing Zoning:                              Unclassified (U)
- D)    Existing Land Use:                              residential
- E)    Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	residential	Unclassified	Rural Residential
South:	residential	Unclassified	Rural Residential
East:	residential	Unclassified	Rural Residential
West:	residential	Unclassified	Rural Residential

**BACKGROUND INFORMATION:**

The urgency ordinance for “Commercial Marijuana Cultivation Regulation” includes a provision reading in part: “Cultivation will not be allowed within 350 feet of a residential structure on any adjoining parcels. Applications for a variance from this provision will be considered by the Trinity County Planning Commission.” (Ord. 315-816; Sec. 32.O.IV (5) (b))

The urgency ordinance defines the term “variance” as: “Variance” is defined as Trinity County Ordinance 315 section 31.” During its November 17, 2016 meeting the Commission spent time discussing both the state and county requirements for issuing a variance.

Each zoning classification and land use has an associated set of development standards, which are specified in the Trinity County Zoning Ordinance. Both State law and the zoning ordinance provide criteria to use in evaluating a variance application. Section 65906 of the California Government Code reads as follows:

"Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits."

Section 31.A. of the zoning ordinance further elaborates on the State's Government Code standards by establishing the following criteria:

In considering a variance request, the following guidelines shall be observed:

1. No special privilege. A variance cannot be a special privilege extended to one individual property owner. The circumstances must be such that the same variance would be appropriate for any property owner facing similar circumstances.
2. Use variance prohibited. The consideration of "use variance" is specifically prohibited. These are variances, which request approval to locate a use in a zone from which it is prohibited by Ordinance.
3. Disservice not permitted. A variance must not be injurious to the public welfare, nor to adjacent properties.
4. Not adverse to General or Specific Plan. A variance must be in harmony with the general purpose and intent of the Zoning Ordinance and cannot adversely affect the General Plan or Specific Plans of the County.
5. RD-1 Overlay Zone. Prior to approval of a variance for property within the RD-1 overlay zone, permission must be granted or deemed not necessary by the Secretary of Agriculture.

Since the cannabis cultivation site cannot be located elsewhere on the property due to the shape of the property, location of wetlands, proximity to other neighbors affecting relocation of the site, the granting of the variance would not be a special privilege for the applicant that could not also apply to other commercial cannabis growers under identical circumstances.

Annual Renewal:

As discussed during previous Commission meetings, variances from the cannabis cultivation setback (350 feet) are issued for a period of one year. (This should be tied to the license effective dates.) The renewal is predicted to be fairly simple and will be performed by the Planning Director or his/her designee. Some factors that would be included in the review would be any complaints received during the previous year, ensuring that the grower is in good standing with the County and State licensing requirements, and that there are no other changes to the property that could affect the continuation of the variance.

**PROJECT EVALUATION:**

The applicant plans to cultivate cannabis on his 3.16 acre parcel off of Bear Rock Road in the Trinity Pines Subdivision (Post Mtn area), Hayfork. The site plan provided by the applicant (Exhibit "B") identifies the on-site development; Exhibit "C" shows the location of the applicant's cultivation area in relation to the nearest permitted dwelling (APN: 19-34-10) to the southeast. This dwelling is approximately 237 feet from the applicant's cultivation area. As Exhibit C also indicates, there appear to be other neighboring structures within 350 feet, including dwellings, but these are unpermitted structures.

Jeff Dickey, Code Enforcement Officer, has reviewed the application and verifies the proximity to other neighboring dwellings precludes relocation. He stated that relocating would result in placing the cultivation nearer to other properties and that the affected property also has a cultivation site; therefore, the impact of granting the variance is minimal. As a side note, setbacks are likely to be an issue almost everywhere in the Post Mountain area.

There has been one inquiry from a neighboring property owner to the north. His parcel (APN; 19-340-02) does not have a cultivation site. He acknowledges that the cultivation site is greater than 350 feet from his dwelling, but is concerned about the 8 foot high, black plastic screening. Black plastic screening is not allowed, but is prevalent in the Post Mountain area. Note that the conditions of variance approval require compliance with State and local cannabis requirements. This would include replacing the black plastic with an acceptable screen or fence. The cultivation site itself does not appear to be visible from this neighbor's property, but the screen is.

None of the other review agencies had comments.

**ENVIRONMENTAL EVALUATION:**

The project is exempt from CEQA review under Section 15305(a) [minor alteration of land use limitations].

It is consistent with the site's General Plan designation of Rural Residential and, with the exception of the setback, complies with the County's urgency ordinance (315-816.EXT (A1)); complies with all other zoning requirements for the site; and the cultivation area is not located within the 100 year floodplain, will not result in the removal of riparian vegetation, and is not located in an environmentally sensitive area. The project will not have a significant adverse impact on the environment, or contribute to a cumulatively significant adverse impacts. The project will not affect a state scenic highway, cultural or historic resources, federal or state listed species or species proposed for listing, jurisdictional wetlands, or established floodways. The project is not located within a toxic site listed by the California Environmental Protection Agency as provided under Section 65962.5 of the Government Code.

**STAFF RECOMMENDATION:**

Staff recommends the following:

Approval of the variance to allow reduction of the cannabis cultivation setback from 350 feet to 230 feet on APN 19-360-55, subject to the following conditions of approval and based on the following findings of fact:

***Findings***

1. There are special circumstances applicable to the property that, with strict application of the zoning ordinance, deprives it of privileges available to other properties with similar zoning in the vicinity that plan cannabis cultivation.
2. The variance is not a grant of special privilege to the applicant because the applicant's property is only 3.16 acres, and, if relocated, would be closer to other neighboring dwellings.
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance urgency provisions for commercial cannabis cultivation.
4. No opposition from surrounding property owners or review agencies was submitted that would adversely affect approval of the variance.

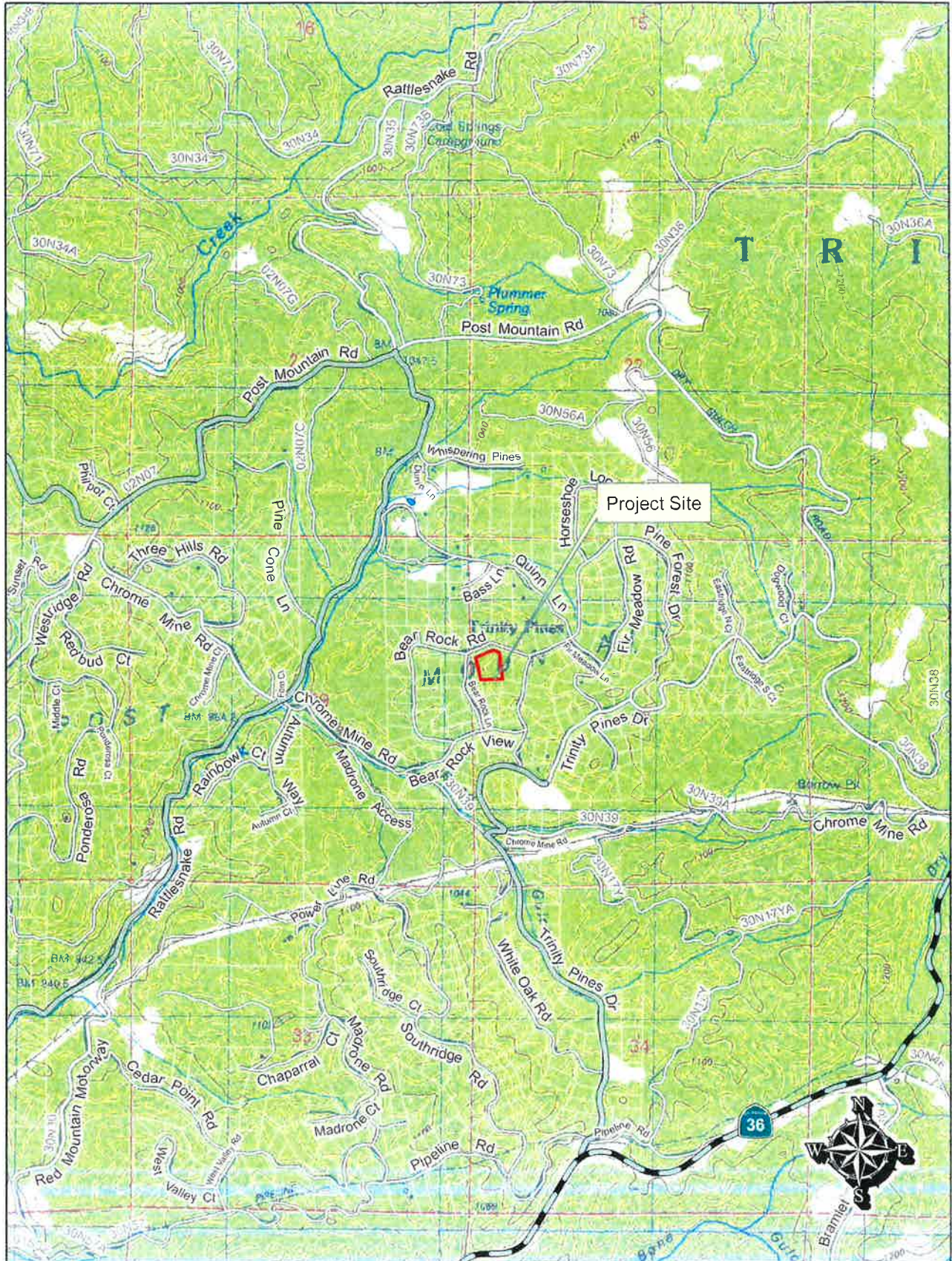
CONDITIONS OF APPROVAL  
XIONG CANNABIS SETBACK VARIANCE (P-17-23)

1. The variance is approved for a period of one year from **April 1, 2017** through **March 31, 2018**; provided, however, that the variance may be renewed annually.
  - a. Application for renewal shall be made prior to expiration of the variance, preferably at least 30 days in advance;
  - b. shall not require a formal public hearing, unless specified by the Planning Director or referred to the Planning Commission; however, written notice shall be provided by the County to surrounding property owners at least ten (10) days prior to the Planning Director's decision to approve or deny the annual renewal; and
  - c. shall be subject to a filing fee as specified by resolution of the Board of Supervisors.
  - d. The Planning Director, at his/her discretion, may approve, deny or refer the annual renewal request to the Planning Commission. The director shall not add or modify conditions of approval applied by the Planning Commission. If submitted to the Planning Commission by the Planning Director for action, no additional fees will be required.
  - e. Action to renew the variance by the Planning Director may be appealed to the Planning Commission in accordance with Section 34 of the Zoning Ordinance, including the required appeal fee.
2. The variance shall be subject to the securing of all necessary permits, licenses, and approvals for the proposed cannabis cultivation operation from all County and State agencies having jurisdiction over any aspect the operation.
3. Structures on the property shall be in compliance with the California Building Code and the Trinity County Code.
4. The variance shall become effective after all applicable appeal periods have been expired or appeal processes have been exhausted. The applicant has the sole responsibility for renewing this variance before the expiration date listed above. The County will not provide a notice prior to the expiration date.



# PROJECT LOCATION MAP

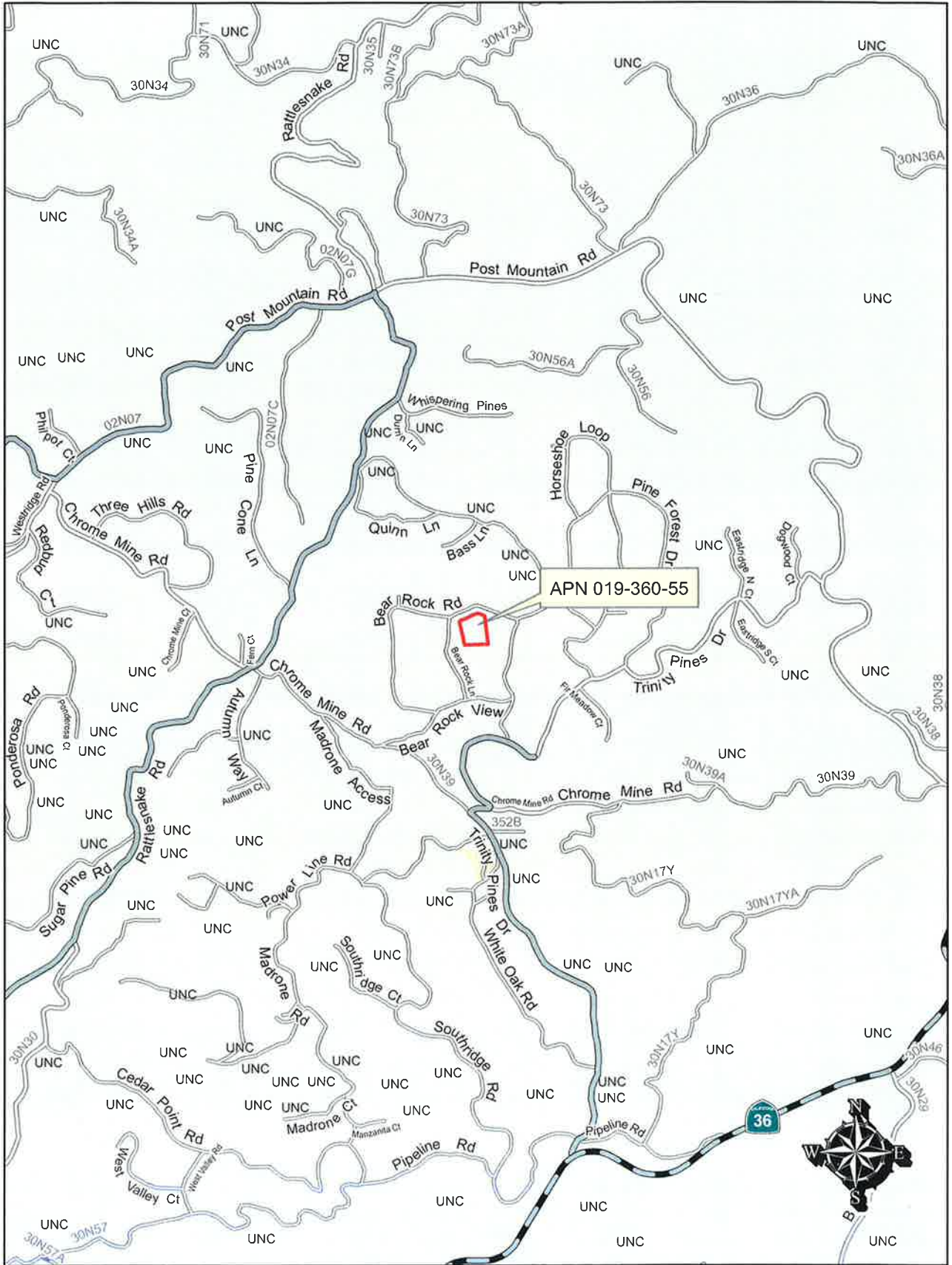
## Xiong CC Variance P-17-23





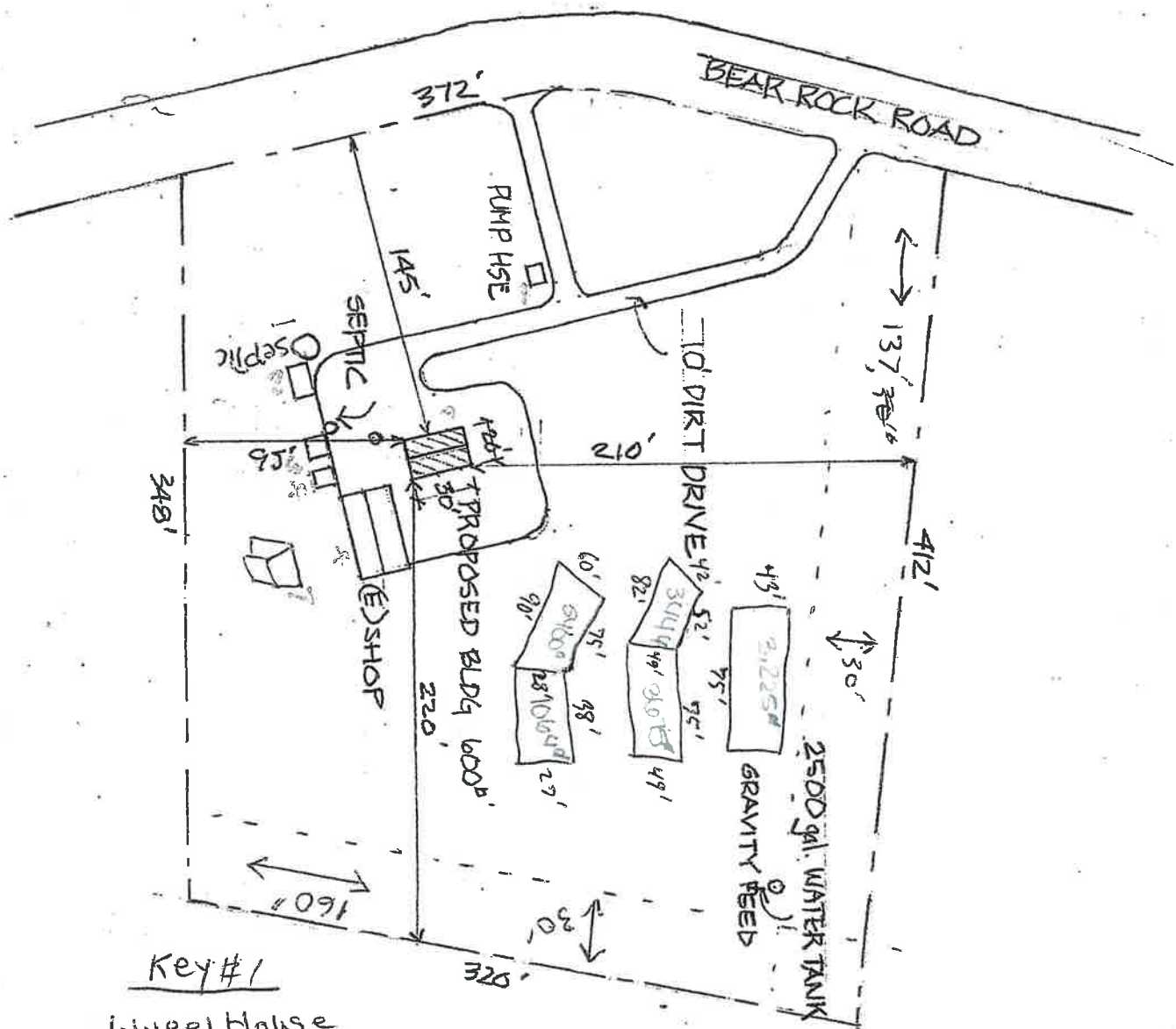
# ZONING

## Xiong P-17-23



A-2

**PLOT/SITE PLAN**



Key #1

- 1. Wheel House
- 2. shed, cannibas drying
- 3. Generator House
- 4. shed cannibas storage
- 5. Garage - 1982 permit NO 4839
- 6. future House.
- 7. Fertilizer House
- 8. water tank 2500 gal.



**TRINITY COUNTY BUILDING DEPARTMENT**

APPLICANT PREPARED SITE PLAN	
Permit No.	
Drawn By: <b>SNYDER</b>	APN: <b>19-260-55</b>
Date: <b>3/15/17</b>	Owner Name: <b>XIONG</b>
Scale: <b>1/8" = 10'</b>	Lot Area: <b>3.16 AC.</b>





Google Earth



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## Ruth Hanover

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**From:** Philip J Kearney <pjkearney@fastmail.fm>  
**Sent:** Saturday, May 13, 2017 1:10 PM  
**To:** Info.Planning  
**Cc:** John Fenley  
**Subject:** Variance Notice: Xiong , P-17-23

Gentlemen:

I am in receipt of Trinity County Planning Department Notice of Public Hearings in regard to the above noted applicant request for variance for 350' cultivation setback from neighboring residential dwelling. My residence is directly across Bear Rock Road, Post Mountain, from the proposed site. As my personal appearance at a hearing in Weaverville will be of great inconvenience to me, I have questions regarding this variance, as follows:

1. My information about the proposed site, which is not currently visible from neither my property nor public access road, due to 8 foot high black plastic screening along the applicants side of the road. I have very little personal contact with the applicant, due to the applicant's inability to converse well in the English language, and also due to cultural differences, Therefore, my only information about the site is through the summer 2016 version of Google Earth. This view locates the grow site toward the rear area of that property, and the ruler tool indicates that this site is 382 feet from my residence. Some landscape movement has been recently done near the grow site, but I am not able to determine if this activity changes the site. Therefore, if the site remains the same as in 2016, is a variance necessary?
2. Does the applicant intend to enlarge or change the grow site, which would necessitate a variance?
3. Can I comment, during this variance request, regarding the applicants use of the black plastic screen of the entire property, which is currently prohibited by TC Ordinance 315-816, page 8, Section 6 e?
4. Can the application for a commercial grow be changed to a Cottage Industry Application for 35 plants, which would be more appropriate for this Rural Residential zoned area?

May I request an answer to these questions in a timely manner, so that I may make appropriate reply to the variance request.

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Philip J Kearney  
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