

MINUTES

1. CALL TO ORDER

Chair Hoard called the meeting to order at 7:00 p.m. Members present: Dan Frasier, Mike McHugh, Graham Matthews and Richard Hoard. Members absent: Diana Stewart. Staff present: Interim Planning Director Leslie Hubbard, Associate Planner Colleen O’Sullivan, Associate Planner Scott Watkins and Clerk Ruth Hanover.

Director Hubbard provided a letter from Andrew Merkel to the Commission withdrawing his Appeal.

Chair Hoard announced changes to tonight’s agenda. He said Item 5, the Magallon Variance Request, and Item 6, the Merkel Appeal, have both been withdrawn, and that there have been requests from the public to hold the Bus Stop Workshop first. He said we will hear “Old Business” first and then conduct the Bus Stop Workshop first under New Business.

2. PUBLIC COMMENT

Members of the public may address the Planning Commission concerning matters within their jurisdiction, which are not listed on the agenda and to request that a matter be agendized for a future meeting. No action may be taken on these matters at this meeting.

Comments received from John Brower, and Tom Ballanco.

3. MINUTES – February 22, 2018.

Upon motion of Commissioner Frasier, seconded by Commissioner Matthews, approves the Minutes of February 22, 2018, as submitted. Motion carried unanimously.

OLD BUSINESS

4. VARIANCE FROM REQUIRED 350’ COMMERCIAL CANNABIS SETBACK P-17-54

Public Hearing: Request for “annual variance” from the required 350’ cannabis cultivation setback from neighboring residential dwelling [Ord. 315-816, Sec. 32.O.IV(5)(b)], located at located at 1550 Lewiston Road, Lewiston. APN:025-250-24. Applicant: Mason-Davis. *(Continued from 1/25/18 for more information & continued from 2/22/18 at applicant’s request)*

Associate Planner Colleen O’Sullivan presented an amended staff report. She advised the matter was continued twice, once for more information, and the other at the applicant’s request as he had hired a consultant.

Chair Hoard opened the hearing to public comment.

Comments received from Terry Gustine, Agent Deidra, Scott White, Applicant Jake Davis, Lathan Martinez, Katie Quinn, Lisa Wright, Tony Cole, Craig Berry, Mary Cole, Tom Ballanco, and John Brower.

No further comments being received, Chair closes public comment period.

Commissioner McHugh, for purposes of discussion, moved to deny the Variance. Commissioner Frasier seconded.

Commissioner Frasier said there were complaints made and asked if any of those were filed with the County as a formal complaint. Planner O'Sullivan responded she did not know. Director Hubbard stated depending on when we receive complaints and when Mr. Davis engaged the licensing program, those complaints would have been routed differently; if he was in the program, it would have gone to our Compliance Officer; if he was not yet in the program, it would have gone to Code Enforcement. She said we do keep track of all of them.

Commissioner McHugh stated the Opt Out Zones are "no grow zones", that's Board policy. They specify it in the Cultivation Ordinance and remember this particular opt out zone was added after the initial Urgency Ordinance was published. It was added at first renewal, which means that the community got together and convinced the Board to create an additional opt out zone in the Lewiston area. He said the Ordinance specifically talks about the opt out zones as being the high dense areas where impacts of nuisance, their words are that "it creates a high risk or significant risk of a nuisance" and hence, the growing was considered to be not appropriate in these zones. He said they also put in each of the opt out zones a date certain by which a filed application with the North Coast Water Quality folks would give the applicant an exception to the ban in the the opt out zone, that exception allowing them to in fact apply for consideration. That's what that date gives you, it just says the application to the Water Quality Board was simply an application, there was no follow up required in our ordinance. McHugh said the exception to the ban, the date exception, was to file that application and that would get you consideration by staff of your application. He thinks we need to be very careful about considering any relaxation of the ordinance regulations in an opt out zone. There are several other applicants in the Lewiston opt out zone and he doesn't know about all of them, but several of them do not need Variances, so they fit within the bounds of the regulations in the no grow zones because they use the same exception, but they don't have the further impact on neighbors of requiring a Variance. He thinks in an opt out zone we should presume the community is against relaxing the rules in granting a Variance. He said it's heartening to see a big turnout on both sides tonight, but he thinks the presumption in opt out areas is that they should **not** have to show up to defend the opt out zone. McHugh said by submitting in time to get the Water Board exception, an applicant is already effectively getting an exception to the rules of not growing in an opt out zone, and this applicant has already received that exception from the no grow by having his application considered and us being here tonight, but he thinks to further impact the residents of an opt out zone by granting a Setback Variance of any sort in a no grow zone is really not warranted because we're in fact extending the impact of growing in a no grow zone, by further granting a Variance. He said in this case virtually all of the work done by the applicant was done after the opt out zone was created, so in terms of invested expense, that was assuming the risk. McHugh said there was a reference to Section 31 of the Zoning Code tonight, which are the rules under which Variances are given, there is a comment in there that use variances are prohibited. This isn't the exact case, but the spirit of what is said here he thinks is applicable. It says that use variances are prohibited, this would be allowing a use in a zone that is not in the Zoning Ordinance for that zone. He said this is a no grow zone and he thinks by relaxing the regulations further than the exception that is offered in the ordinance, by meeting the date and being considered for an application, he doesn't think it is warranted, so he's not in favor of supporting the ordinance.

Chair Hoard stated he would echo comments received from Mr. Ballanco and Mrs. Mary Cole, it is a matter of distance at this point, if the distance is in fact 360 feet then the argument or conversation is moot because no variance is required, and if a variance is required the two neighbors that are affected are in fact in favor and have written letters of support, so it comes down to the measurements basically. He said trembles are very accurate, how can we assess this. He doesn't know if a continuance is warranted so staff can perhaps revisit the site, and with more accurate equipment confirm if Mr. Gustine's property is in the variance zone or if it is outside. That is a possible solution.

Commissioner Matthews said he didn't think that is actually what Commissioner McHugh was referring to though, it's more of a sort of philosophical interpretation, he's not saying he agrees with it necessarily, but he was presenting as such, but it's really about whether an additional Variance would be required on top of the already relaxation of restrictions. He said he agrees we have to have an accurate number, and probably at this point, since it's controversial, require the applicant to have a license surveyor establish the distance. He asked if the County had a surveyor and said they (the County) can take that role on if they chose to. He said in looking at the maps, it's clear to him the polygon that staff used for the pad is not quite in the right location and it looks like the information provided by the applicant, the tremble-based option, is more accurate, but that's not enough to say that we should rely on that, it needs to be verified somehow. Matthews said if the Gustines are not within 350 feet, then the precedence that this Commission has set in the past is that we would approve a Variance if other property owners within the 350 feet supported the application. He said this is our first interpretation of an opt out zone and a Variance in an opt out zone, but our previous work has supported, if the people within 350 feet support the application, then he thinks we have approved every other Variance application; we have not approved ones where people are in conflict and the neighbors within 350 feet oppose the process.

Commissioner McHugh stated the picture he has of the site shows another grow northwest of the subject site and asked if they were in the program as they wrote a letter of support. Planner O'Sullivan responded they are not. McHugh said if that parcel has not made the enrollment date, it doesn't qualify to be in the opt out zone, so he is skeptical of the support from that person. He said he would hate to see us continue this again arguing over whether it's 350 feet or 360 feet or 340 feet, we could imagine a condition to move the greenhouse so it's back 350 feet if it's an issue. He believes it's a much bigger issue to set the precedence of issuing Variances in the opt out zone, that's what he believes is at stake here tonight. Since October of last year when the permanent ordinance went into effect, we have not issued any Variances in an opt out zone, so this would be the first one and he would not like to see us set a precedence for doing such, because these are banned zones and we are further impacting the community by adding a Variance to a residence in an opt out zone. He said he would point out again that there are other cultivators within this very same opt out zone that made it under the date that don't require Variances, so he is very hesitant to set this precedence of issuing Variances in basically underlying banned zones. He said he doesn't think the issue here is tremble, he thinks we could fix that issue with a condition, he thinks it's a broader issue.

Chair Hoard said he understands that the community does have concerns and he understands the opt out areas; however, the mechanisms, the structure and the framework that has been adopted by the County stands; and these are mechanisms allowed for the applicants to be used, in this case a Variance. He believes that if Mr. Gustine's property is not within the 350-foot designated variance distance, that Mr. Jake Davis is allowed to use these mechanisms, and the application for a Variance is valid and should be considered as such, despite opposition of the public. He said these are dates that have been set as exceptions, they are in the permanent ordinance and stated as so. If Mr. Gustine's property is not within the distance and there is support from the affected other two neighbors, he believes the Variance should be granted.

Chair Hoard asked if there were any other comments from the Commissioners, or any competing motions, and said there is a motion on the table. He said since there are none, we are going to go for a vote on the motion that was presented to deny the Variance.

Chair called for the vote: Commissioners McHugh and Frasier-Aye, Commissioners Matthews and Hoard-Nay. Motion fails 2-2.

Commissioner Matthews moved to continue the matter until we resolve the distance question. Motion died for lack of a second.

Chair Hoard asked if anyone wanted to make one last motion. No one volunteered.

5. **VARIANCE FROM REQUIRED 350' COMMERCIAL CANNABIS SETBACK** **P-17-29**

Public Hearing: Request for “annual variance” from the required 350’ cannabis cultivation setback from neighboring residential dwelling [Ord. 315-816, Sec. 32.O.IV(5)(b)], located at 1351 Barker Valley Road, Hayfork. APN: 015-420-16. Applicant: Magallon. *(continued from 2/22/18)* **WITHDRAWN-NO ACTION TAKEN**

NEW BUSINESS

10. **COMMUNITY DISCUSSION AND WORKSHOP REGARDING BUS STOP SETBACKS FOR CANNABIS RELATED ISSUES**

Community discussion and workshop regarding bus stop setbacks for cannabis related issues.

Chair Hoard introduced the item stating the purpose of the workshop is to bring clarity to the issue, bus stops are a major concern with regard to the setbacks. Interim Planning Director Hubbard stated she has heard from three schools, and representatives from Douglas City and Trinity Alps are present; she heard from Burnt Ranch, but they were unable to attend this evening. Scott White, representative of Lewiston Elementary School, was also present. Ms. Hubbard said she brought some maps of zoning districts and where bus stops are located currently; she noticed the C3 zoning district is missing on the maps, but wherever C3 should be located, it is still within a commercial zoning district, so in terms of the four ordinances that we have that are currently in effect, cultivation, testing, nursery and distribution, for those purposes the maps are good enough to go by.

Tom Barnett, Superintendent of Trinity Alps Unified School District introduced Luke Case the Director of Transportation, who is also a licensed bus trainer, who is relatively knowledgeable on this. He stated what Luke is passing out is Trinity Alps’ updated bus stops. He said we do appreciate the setbacks being put back in the ordinances. Luke Case explained how the bus routes and bus stops are established and coordinated with CHP. He stated the Superintendent of Schools decides where the bus stops are going to be and each school district makes its own list of bus stops. The school districts must abide by standards set by the CHP and the CHP may approve different standards upon review.

Chair invited comments from the audience. Comments received from Dave Albiez, Scott White, Shannon Ross, Tom Ballanco, Clarence Rose and John Brower.

Chair Hoard thanked everyone in audience for participating in the workshop.

6. **APPEAL OF DENIAL OF COMMERCIAL CANNABIS CULTIVATION LICENSE**

Public Hearing: Appeal of Interim Planning Director’s decision to deny Application for Commercial Cannabis Cultivation License. Located 3620 Wildwood Road, Wildwood. APN 019-690-20. Appellant/Appellant: Andrew Merkel. **WITHDRAWN-NO ACTION TAKEN**

7. **VARIANCE FROM REQUIRED 350' COMMERCIAL CANNABIS SETBACK** **CCV-18-0**

Public Hearing: Request for “annual variance” from the required 350’ cannabis cultivation setback from neighboring residential dwelling [Ord. 315-816, Sec. 32.O.IV(5)(b)], located at 3351 State Highway 3, Hayfork. APN: 016-200-45. Applicant: S. Xiong.

Associate Planner Colleen O’Sullivan presented the staff report. She said the project site is actually south of Hayfork on S Salt Creek Road and there are two residences affected. There was one letter of support received. Staff is recommending approval.

Chair Hoard opened the hearing to public comment.

Comments received from Agent Lathan Martinez.

No further comments being received, Chair closed public comment period.

Commissioner Matthews moved to approve the variance to allow reduction of the cannabis cultivation setback from 350 feet to 295 feet from the residence on APN 016-200-47 and from 350 feet to 234 feet from the residence on APN 016-200-46, based on Findings of Fact 1 through 4, and subject to Conditions of Approval 1 through 5. Seconded by Commissioner Frasier and carried unanimously.

8. VARIANCE FROM REQUIRED 350' COMMERCIAL CANNABIS SETBACK CCV-18-02

Public Hearing: Request for “annual variance” from the required 350’ cannabis cultivation setback from neighboring residential dwelling [Ord. 315-816, Sec. 32.O.IV(5)(b)], located at 1438 Morgan Hill Road, Hayfork. APN: 014-200-32. Applicant: P. Xiong.

Associate Planner Colleen O’Sullivan presented the staff report. She advised there are at least nine, possibly twelve, variances that would be required, and there are three cultivation areas with two greenhouses proposed. She said we received one letter of support and one letter of opposition. Staff is recommending denial.

Chair Hoard opened the hearing to public comment.

Comments received from Agent Lathan Martinez.

No further comments being received, Chair closed public comment period.

Chair Hoard stated he was curious, because he didn’t receive a Google map, so did some research on his own, downloaded the app and compared it with the County Parcel Viewer. He was surprised to see the amount of cultivation in the area, literally every other house has some sort of cultivation. He said Figure 3 provided by the applicant shows grows on every side, and across the street on Morgan Hill there’s many. He said there was one letter in favor, which appears to be a neighbor, and one objecting which he isn’t sure if it’s within 350 feet, he speculates they’re not. Hoard said under current County Ordinances it is within an allowed zoning, and the request for a variance is valid, as we all know the variance approval is good for one year, a year from now it can be reassessed if any neighboring conflicts do arise. He said the applicant is among a myriad of legal grows and has chosen to be compliance, pay their fees, pay their taxes and adhere to Water Board stipulations and environmental concerns. He is in favor of granting the variance.

Commissioner McHugh stated he thinks in an earlier item tonight where he pointed out there was an illegal grow being that had written a letter of support, he thinks it being in a neighborhood of illegal grows is not a strong argument the way he is looking at it. This is zoned RR1, this is a tiny little lot that is 55 feet wide. He said if memory serves, we had a long narrow lot like this in Junction City along the river where we denied the variance because it didn’t fit on such a tiny lot, right next to the river. He said it strikes him that the precedent that we set is consistent with this, in fact this one has far more residences that create an issue than that one did, and he would suggest the neighborhood is not an appropriate site and maybe this would be a spot for Mr. Hanover to investigate all these grows, maybe get them in the program. He said he sort of concurs with staff’s recommendation on this.

Commissioner Matthews stated certainly the potential for conflict is high. If everyone of those residences within 350 feet had a grow, would we have a different opinion? Commissioner McHugh asked licensed grow? He said which means this is the first one because they are all going to have for the variance. If we had done growing overlays maybe this would be an appropriate neighborhood, but we’re not there, we are issuing variances under the current ordinance. He said this sure looks to him like a high-density

neighborhood. Commissioner Matthews responded which is what we are trying to avoid.

Commissioner Frasier said he definitely sees Commissioner McHugh's point, he doesn't see how this fits here. He said is we have also in the past used the fact that on small parcels where all the neighbors were growing, we took that as their consent basically that they don't care that this guy is getting a license. He said the parcels in Trinity Pines, every one of them was surrounded by grows, most of them didn't require variances because there was no legal house; this is a little different in the fact that it's kind of in the middle of town. He said his biggest issue is that's a residential area and residential areas are not the place for commercial grows.

Commissioner McHugh moved to deny the request for variance to allow reduction of the cannabis cultivation setback on APN 14-200-32 from 350 feet to various distances for up to 12 structures, based on Finding that in light of the variance request including variances from at least nine neighboring dwellings, staff does not consider the applicant's request to meet the intent of Ordinance No. 315-823, which is the Cannabis Cultivation Ordinance, to avoid cannabis cultivation in high density neighborhoods. Seconded by Commissioner Matthews. Motion carried 3-1, with Chair Hoard Voting No.

9. **VARIANCE FROM REQUIRED 350' COMMERCIAL CANNABIS SETBACK** **CCV-18-04**

Public Hearing: Request for "annual variance" from the required 350' cannabis cultivation setback from neighboring residential dwelling [Ord. 315-816, Sec. 32.O.IV(5)(b)], located at 331 N Salt Creek Road, Hayfork. APN: 016-200-04. Applicant: Vue.

Associate Planner Colleen O'Sullivan presented the staff report. There are two cultivation sites on the parcel. We received a letter from the neighbor to the south objecting to the variance, and no letters of support were received. Staff is recommending approval.

Commissioner McHugh stated in the letter objecting to the variance it sounds like most of the angst is with the smaller grows across the road from the main part. He asked if the applicant discussed eliminating the smaller grow with staff. Ms. O'Sullivan responded no there wasn't an opportunity since the letter came in by FAX after staff reports were mailed and then by mail a couple of days later.

Commissioner Frasier stated the letter of opposition indicates the applicant had a grow two years ago that was abated by the County and asked if staff knew anything about that. O'Sullivan responded she did not. He asked wasn't there a restriction on properties that have been abated? Commissioner McHugh responded the practice was to get an injunction filed in civil abatements. That was a practice, still is a practice.

Chair Hoard opened the hearing to public comment.

Comments received from Agent Lathan Martinez, Applicant Peter Vue, Alan Hall, John Brower, Tom Ballanco and Nate Vue.

No further comments being received, Chair closed public comment period.

Director Hubbard advised that she visited the site last year with Fish and Wildlife, and not getting into any neighborhood disputes, but the water quality issue was really with the neighbor and the livestock, not with the cultivation site; the cultivation site was good with Fish and Wildlife. She said one other thing mentioned was cutting timber. She explained Vue had a big tree fall on their house, they rebuilt and did some site preparation, and any of the timber clearing that was done, was done legitimately.

Commissioner Frasier moved to deny the variance based on the fact that we do have a neighbor within the 350' who is in opposition. He said he doesn't know that we need to set the precedent that it has to be a

good neighbor that complains about granting a variance. Seconded by Commissioner McHugh for purposes of discussion.

Commissioner McHugh stated he is somewhat swayed by it being (zoned) Ag, we have lots of parcels like the way the neighbors described in this county and doesn't think that's the compelling point. He said the thing that strikes him is that if this is a larger parcel than others we have granted variances on, we have in the past both approved and denied variances where we have had neighbor objections. When he was taught about variances the mere objection of a neighbor is not sufficient to deny a variance. We've leaned one way or the other in the past weighing that input, but this is a discretionary action we're taking, so he's not actually that concerned that one neighbor has raised it in this case, or really any other case; he is actually more inclined to support the variance.

Commissioner Frasier stated the reason we put the 350' setback in the ordinance was to protect neighbors, because when we hear from everybody in opposition of cannabis cultivation in Trinity County is they didn't want to smell it, they didn't want it in their house. That was kind of a trade-off, we'll allow it, but if the neighbor doesn't want it in their yard you can't grow there, there are some places that it just doesn't fit. He said he wouldn't be surprised if the other neighbor ends up getting abated for livestock, yes, it's Ag, but you still have to have something that fits your property; you can only have a certain number of animals per acre, you can only have certain things fit on certain properties, and sometimes marijuana cultivation isn't going to fit on a 2 ½ acre parcel, even if it is zoned Ag. Most of the Ag parcels in the county, if you had an issue with being less than 350' from your neighbor, you can move your grow, but when your Ag parcel is only the size of a rural residential, it makes it a little different, it's pretty tight in that area, there are a lot of residences, but they are not very big parcels. He said he has a problem setting a precedent, this guy is not a good neighbor and so we're going to go a head and grant the variance. He said he's not in favor of that.

Commissioner Matthews said he was torn, it's a difficult one for him and he's still grappling with it. Unfortunately, there is really no way they can relocate it. He said he appreciates the way they are trying to take care of their property, but he's not sure that can sway his decision on something like this.

Chair Hoard said it is a difficult variance he does strive to be objective, but he does appreciate the good stewardship of the property, the many comments in favor of applicant as well. If the variance is granted, chances are the neighbor will complain again and it will come next year, and it will be up to the Director to renew, or he appeals to the Board.

Commissioner Matthews said he found it interesting the neighbor didn't object as much to the larger grow below the road, only the smaller grow above the road. Chair Hoard read from the letter "while we are not very happy with the neighbor's grow on the lower side of the road, we are and will be firmly opposed to any and all cannabis production on the upper side of the road". He asked does that leave any room for possibly... Commissioner McHugh said that was his question earlier and staff said they had not had time to discuss that with the applicant. He suggested public comment be opened again so the applicant could speak to that.

Chair Hoard asked Applicant Peter Vue if he would be willing to compromise and keep just the lower smaller garden and eliminate the larger one above the road. Mr. Vue responded that he could do that, but his house is between the neighbor's house and the smaller grow so he doesn't understand why he would have to do that, but if approved, he would limit it to that.

Commissioner McHugh asked if the smaller grow is visible from 271's house. Mr. Vue responded no, my house is right in between them.

Commissioner Frasier said he's uncomfortable, he doesn't care why the neighbor is in opposition and he doesn't care if the neighbor approves it, that is one of his sticking points.

Chair Hoard said we need to move forward with this, there is a motion on the table. Commissioner McHugh said he would like to make a competing motion.

Commissioner McHugh moved to approve the cannabis cultivation setback from 350' to 98.6' from the residence on APN 016-200-03, from 350' to 333.48' from the residence on APN 016-200-02, and from 350' to 192.19' from the residence on APN 016-200-05, based on Findings of Fact 1 through 4 (Alternative 1), and subject to Conditions of Approval 1 through 4. Seconded by Commissioner Matthews. Motion carried 3-1, with Commissioner Frasier voting No.

11. MATTERS FROM THE COMMISSION

Chair Hoard stated he doesn't want Class K to lose momentum and he appreciates Commissioner Frasier for bringing it up. He said he's looking forward to reading whatever information Mr. Ballanco provided and he has also been in contact with Michael Oliphant, the Senior Building Inspector of Mendocino County, and their Board of Supervisors has approved the second version of Class K and he will make sure to pass it on to the other Commissioners and staff. He thinks it is important for the community and doesn't want it to lose momentum.

12. MATTERS FROM STAFF

Director Hubbard advised there is a backlog of approximately thirty variance requests that need to come before the Commission and asked if the Commission was agreeable to considering some variances on Regular Meetings since the second meeting each month was devoted specifically to cannabis issues. The Commission was agreeable.

13. ADJOURN

The Chair adjourned the meeting at 10:10 p.m.