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| <p>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</p> |
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APPLICANT: Yia Lee

REPORT BY: Colleen O’Sullivan

OWNER: L & M Properties Management, LLC

APN: 025-140-23 & 27.

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from three neighboring residences.

LOCATION: 200 Shasta View Drive, Douglas City, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Douglas City
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Rural Residential, five acre minimum (RR-5)
- D) Existing Land Use: residence, commercial cannabis cultivation
- E) Adjacent Land Use Information:

| <u>Land Use</u> | <u>Zoning</u> | <u>General Plan Des.</u> |
|------------------------|----------------------|---------------------------------|
| North: residential | RR-5/AF-160 | Rural Res/Resource |
| South: residential | RR-5 | Rural Residential |
| East: residential | RR-5 | Rural Residential |
| West: residential | RR-5 | Rural Residential |

BACKGROUND INFORMATION:

The 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. 315-823)

The Cannabis Cultivation 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 a 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.

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 is beginning the process of obtaining a Commercial Cannabis License under the county licensing program (CCL 2017-228). The cultivation area spans two parcels owned by L & M Properties (025-14-23 & 27). These parcels are located on Shasta View Drive, a private road located off of Top of the Grade Road, which is also a private road. The site plan prepared by staff (Figure 2) identifies on-site development and its relationship to the residences (APNs 025-530-22, 025-014-25, and 025-530-45), which lie northwest, east and south of the subject parcels. Approximate distances from the edge of the cultivation area to neighboring residences are 350 feet, 200 feet and 200 feet, respectively).

Jeff Dickey, Code Compliance Specialist, has reviewed this project and provided the following comments: "Due to parcel size (total of two lots is about 4.9 acres), existing easements and steep terrain, relocating the cultivation area would not eliminate encroachment into the 350 foot radius for neighboring dwellings."

Planning staff comments that the property becomes steeper to the southwest and would involve extensive earth-disturbing activities and terracing to relocate the cultivation area.

In addition, relocation would not obviate the need for a variance from residences to the south and west (025-140-21, 025-140-16, 025-140-17).

The applicants could reduce the size of the cultivation area and eliminate the variance request from the residence on 025-140-25.

As of this writing, no other comments have been received.

ENVIRONMENTAL EVALUATION:

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

STAFF RECOMMENDATION:

Staff recommends the following:

Approval of the variance on APNs 025-140-23 & 27 to allow reduction of the Cannabis cultivation setback from 350 feet to 345 feet from the residences on APN 025-530-22, from 350 feet to 200 feet on 025-014-25, and from 350 feet to 345 feet on 025-530-45, subject to the following conditions of approval and based on the following findings of fact:

Findings of Fact for the Use Permit

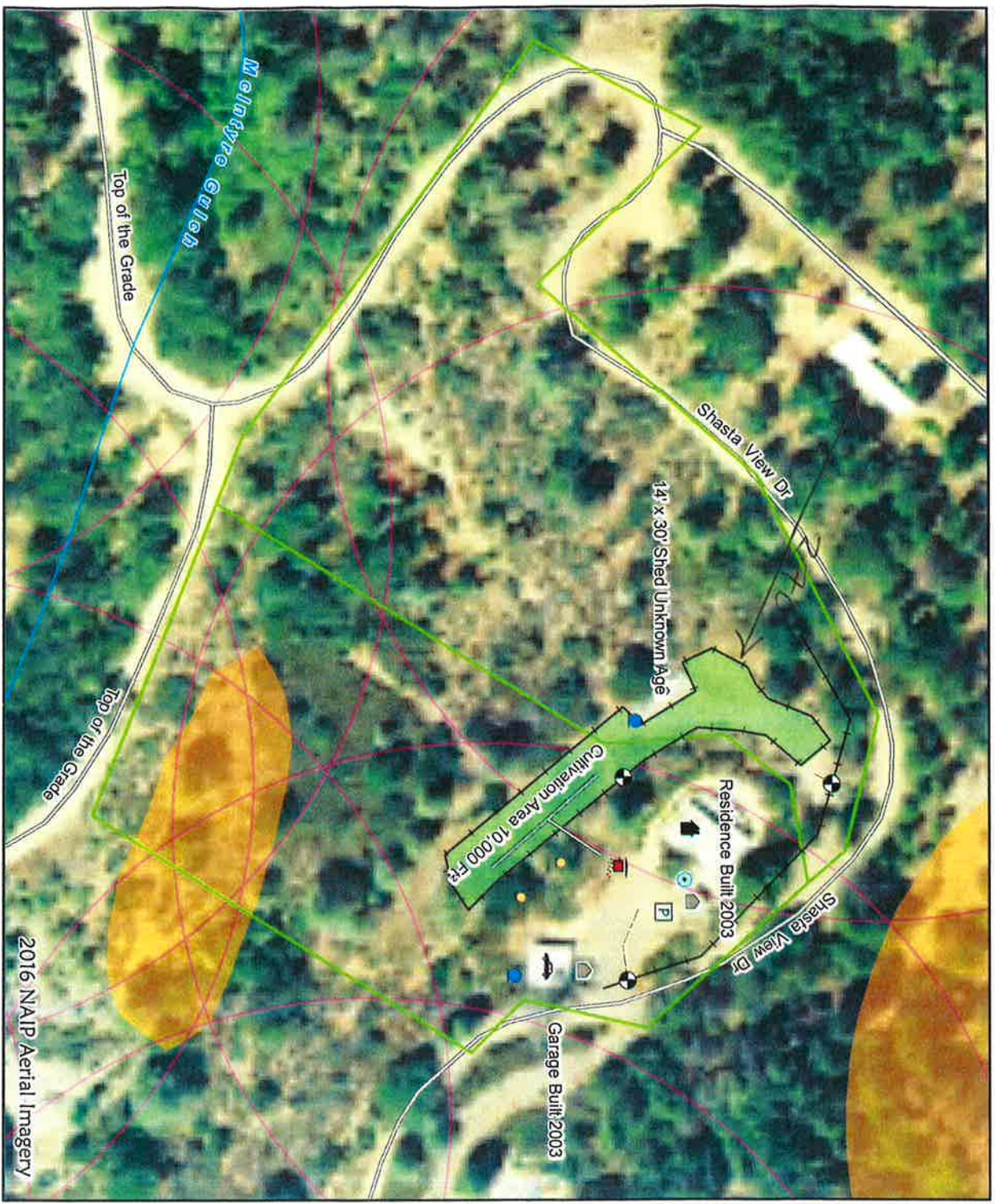
1. There are special circumstances applicable to the property that, with strict application of the zoning ordinance, deprives it of privileges available to other properties with similar zoning in the vicinity that plan cannabis cultivation.
2. The variance is not a grant of special privilege to the applicant because there are similar sites with geographical constraints due to parcel size and terrain. Relocating the cultivation site to another part of the property would involve substantial earth-disturbing activities and terracing, and would not eliminate the need for a variance from a different set of adjacent residences (025-140-21, 025-140-16, 025-140-17).
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance 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
YIA LEE CANNABIS SETBACK VARIANCE (P-17-52)**

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.
2.
 - 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.
3. 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.
4. Structures on the property shall be in compliance with the California Building Code and the Trinity County Code.
5. 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.

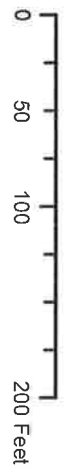
Yia Lee: 025-140-23-~~00~~ and 27

FIGURE 2 - SITE PLAN



Coordinate System: NAD 1983 UTM Zone 10N
 Projection: Transverse Mercator
 Approximate distances, scales and locations
 Site conditions may vary

1:1,200
 2017 Trinity County Map



2016 NAIP Aerial Imagery

Legend

- Property Line
- Cultivation Area
- Garage
- Residence
- Shed
- Septic
- Leach Lines
- Gates
- Pump House
- Well
- Nutrient Tank
- Water Tank
- Fences
- Streams
 - Intermittent
- Road
 - Rocked
 - Native
 - Driveway
 - 350 Ft Residence Setback
- Slope
 - 0 - 25% (No Color)
 - 25 - 70 %



Date: 12/7/2017

