

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Sally Kephart

REPORT BY: Colleen O’Sullivan

OWNER: Sally Kephart

APN: 014-420-15

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from one neighboring residence.

LOCATION: 720 Kellogg Gulch Road, Hayfork, CA (Figure 1)

PROJECT INFORMATION:

- A) Planning Area: Hayfork
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Rural Residential, 20 acre minimum (RR-20)
- 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-20	Rural Residential
South:	vacant res/residential	RR-20	Rural Residential
East:	residential	RR-20	Rural Residential
West:	residential	RR-20	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.

The Cannabis cultivation site cannot be located elsewhere on the property due the narrowness of the subject parcel and of surrounding parcels. The cultivation site is screened by vegetation from neighboring parcels.

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. The parcel is located on Kellogg Gulch Road, which heads west off Brady Road in Hayfork. Kellogg Gulch Road is not a county-maintained road. The site plan prepared by staff (Figure 2) identifies on-site development and its relationship to the residence (APN 014-470-16), which lies west of the subject parcel.

The applicant is working with the county Commercial Cannabis License program to become compliant with both State and county standards.

Jeff Dickey, Code Enforcement Officer, has reviewed this project and provided the following comments: "The cultivation area is well screened with trees and other vegetation from neighboring parcels and dwellings. Relocating the cultivation area would mean additional ground disturbance and tree removal."

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:

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Approval of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to 200 feet from the residence on APN 014-470-16, 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 relocation would result in unnecessary grading and environmental damage due to site topography.
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
KEPHART CANNABIS SETBACK VARIANCE (P-17-47)**

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.

P-17-47 CC Variance Kephart

less than 350 foot setback from residence to the west



FIG. 2

Google Earth

400 ft

