

<p>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT Initial Commercial Cannabis Variance</p>
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PLANNER: Bella Hedtke

APPLICANT AND PROPERTY OWNER: Chue Thao

CONSULTANT: The Flowra Platform

REQUEST: Initial Commercial Cannabis Variance from the required 350' cultivation setback from a neighboring residential dwelling. (Trinity County Code 17.43.050.A.8)

LOCATION: 961 Top of the Grade, Douglas City, CA 96024 (APN: 025-530-29-00)

GENERAL PLAN DESIGNATION: Rural Residential (RR)

ZONING DISTRICT: Rural Residential 5-acre minimum (RR5)

RECOMMENDATION: Approve with Conditions

ADJACENT LAND USE AND ZONING INFORMATION:

Direction	Land Use	Zoning	General Plan Designation
North	Res., Cannabis	RR5	RR
South	Res., Cannabis	RR5	RR
East	Res., Cannabis	RR5	RR
West	Res., Vacant	RR5	RR

ATTACHMENTS:

- 1 – Project Location Map
- 2 – Detailed Site Map (Provided by Consultant)
- 3 – 350' Setback with Comment Status Map
- 4 – Site Visit Photos
- 5 – Neighbor Comment

PROJECT DESCRIPTION: The applicant has a pending Small Mixed-Light Commercial Cannabis Cultivation license application in Trinity County's Commercial Cannabis Program. As part of this process the applicant has applied for a variance for Trinity County Code 17.43.050.A.8. to reduce the required 350' residential setback to allow their cultivation site to be located less than 350' from two (2) neighboring residences.

APN	DISTANCE FROM CULTIVATON SITE	COMMENT STATUS
025-530-30-00	210'	Supportive Comment
025-530-36-00	325'	No Comment

AGENCY COMMENTS: Project referrals were sent to the following agencies.

REFERRAL AGENCIES	COMMENT STATUS
County Assessor's Office	Comment
County Building Department	Comment
County Environmental Health	No Comment
County Transportation Department	No Response
Code Compliance	Comment

1. County Assessor's Office Comment: "No permits on record for 20x60 building, 10x20 harvest storage building, or 10x20 processing building. Proposed MH, BLDG2019-00252 not shown on plot plan."

Staff Response: The applicant does not live on the parcel and is required to demolish or permit all unpermitted structures per the Commercial Cannabis Cultivation Program. The applicant has an issued building permit, as of 6/05/2019, for a mobile home that has not yet arrived to the property. The mobile home will be located where the decommissioned RV is located on the plot plan.

2. County Building Department's Comment: "Has BLDG2019-00252 for M/H install, no M/H as of yet."

3. Code Compliance Inspector: "Due to the terrain/parcel shape the cultivation site cannot be moved to meet the 350' setback requirement."

ENVIRONMENTAL EVALUATION: Categorical Exemption (15301 Existing Facilities)

FINDINGS: The following findings shall apply to the C. Thao Commercial Cannabis Setback Variance (CCV-2019-004):

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.

There are special circumstances (topography, irregular shape of parcels, and size of parcels) applicable to the project parcels that, with strict application of the Trinity County Zoning Code, deprives the property owner of privileges available to other property owners with similar zoning in the vicinity that plan to establish or have established a Small Mixed-Light Commercial Cannabis Cultivation operation, up to 10,000 sq. ft of canopy.

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.

This variance is from the 350 ft setback requirement provision in Trinity County Code 17.43.050.A.8, not to allow a specific use in the Rural Residential zoning district that is not currently allowed by ordinance.

3. **Disservice Not Permitted.** A variance must not be injurious to the public welfare, nor to adjacent properties.

The purpose of the 350 ft setback requirement provision in Trinity County Code 17.43.050.A.8. is to mitigate odor to nearby neighbors. It should be acknowledged that odor being injurious to adjacent properties is subjective. The closest neighbor, whose residence is within 210 feet of the proposed cultivation area, has provided a letter in support of this application (Attachment 5). Therefore, there is an assumption that the neighbor does not find the odor injurious. If the impacted property (APN 025-530-30-00) were to change ownership, the commercial Cannabis variance process is annual and will allow any future neighbors the opportunity to express their concerns about odor. The residence located on APN 025-530-36-00 did not submit comments, but will be given the opportunity next year to comment.

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.

The general purpose of the Zoning Code is to promote and protect the public health by providing a definite plan of development, protecting the character and the social and economic stability of land uses, and assuring orderly and beneficial development. The proposed project is substantially in compliance with the Zoning Code provisions for Commercial Cannabis Cultivation, which the County has found are necessary to reduce the potential impacts associated with unregulated cannabis cultivation. The one exception is the request for a reduction in the residential setback requirement in Section 17.43.050.A.8 of the Trinity County Code. Section 17.43.050.A.8 allows for specific variances from this standard, consistent with the requirements for variances in State law and the County Zoning Code. The subject parcel contains special circumstances which

justifies the granting of a variance from the residential setback requirement and would be appropriate for any property owner facing similar circumstances. Given the topography, irregular shape, and size of the project parcel (APN: 025-530-29-00) the applicant would not otherwise be able to utilize the full 10,000 sq. ft. canopy size of a Small Mixed-Light Commercial Cannabis Cultivation license as other program applicants in the nearby region. As such, the proposed variance is consistent with the general purpose and intent of the Zoning Code and would not 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.

This site is not within an RD-1 Overlay Zone.

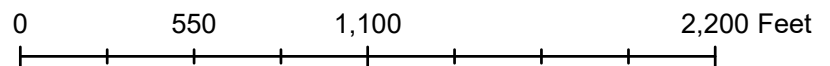
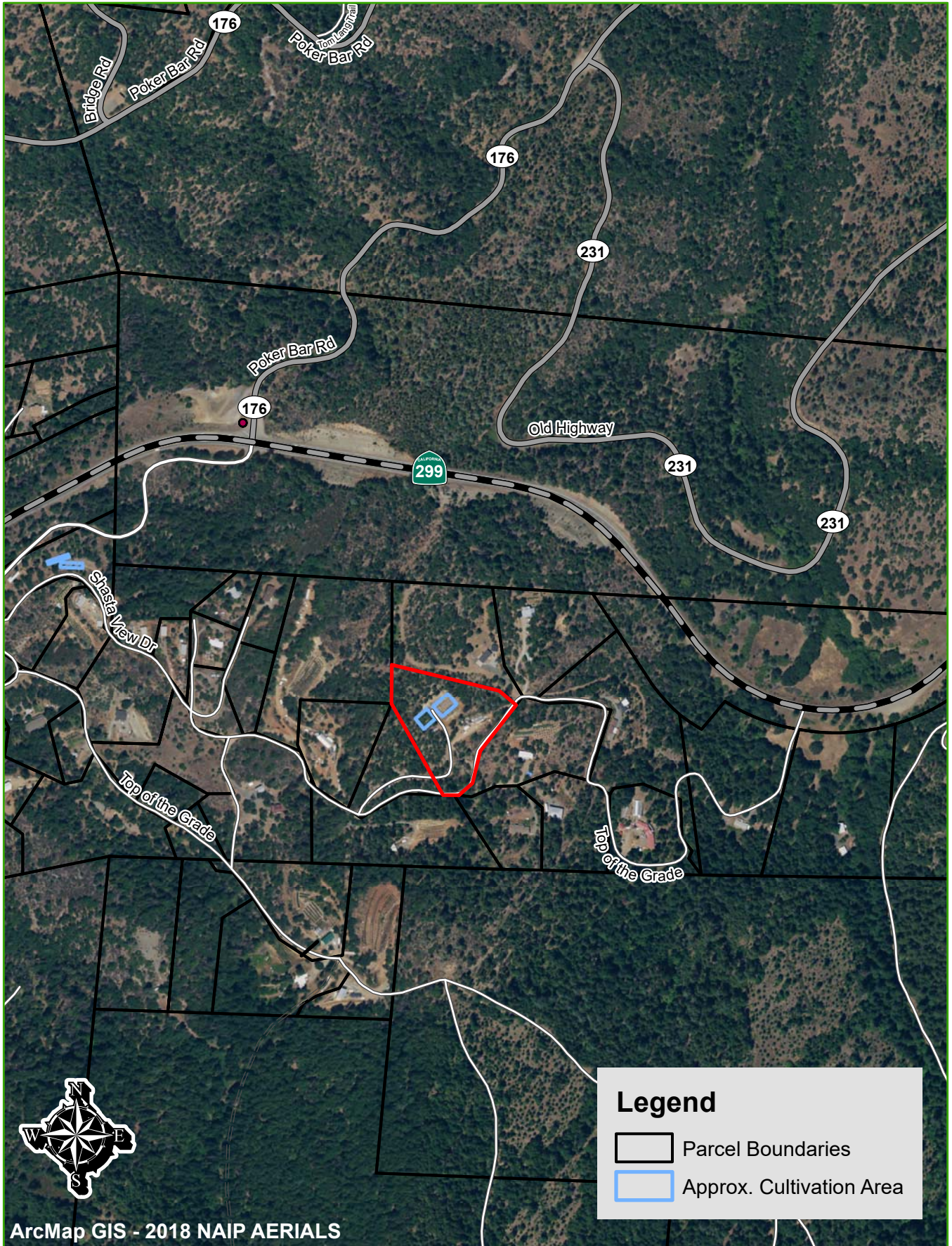
STAFF RECOMMENDATION: Given the site conditions and above discussion, staff recommends the Planning Commission make the following motion:

- Approve Commercial Cannabis Variance Application CCV-2019-004 to reduce the cultivation site setback in Trinity County Code 17.43.050.A.8. from 350 feet to 210' from the residence located on APN 025-530-30-00 and 325' from the residence located on 025-530-36-00, subject to the findings and conditions as stated in this staff report.

CONDITIONS OF APPROVAL: Upon approval by the Planning Commission, the following Conditions of Approval shall apply to the C. Thao Commercial Cannabis Setback Variance (CCV-2019-004):

1. The variance is approved for a period of one year and shall expire on the same date as the Commercial Cannabis License that this variance and parcel is associated with; provided, however, that the variance shall be renewed annually through the Director's Use Permit application process.
 - a. Application for renewal shall be submitted by the applicant or designated agent/consultant prior to expiration of the variance and preferably no later than 60 days in advance.
 - b. The renewal 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.
 - c. The renewal shall be subject to a filing fee as specified by resolution of the Board of Supervisors.

- d. The Planning Director, at their 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.
2. The variance shall be subject to the securing of all necessary permits, licenses, and approvals for the proposed Commercial Cannabis Cultivation operation from all County and State agencies having jurisdiction over any aspect of the operation.
 3. Structures on the property shall be in compliance with the California Building Code and Trinity County Code.
 4. 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.





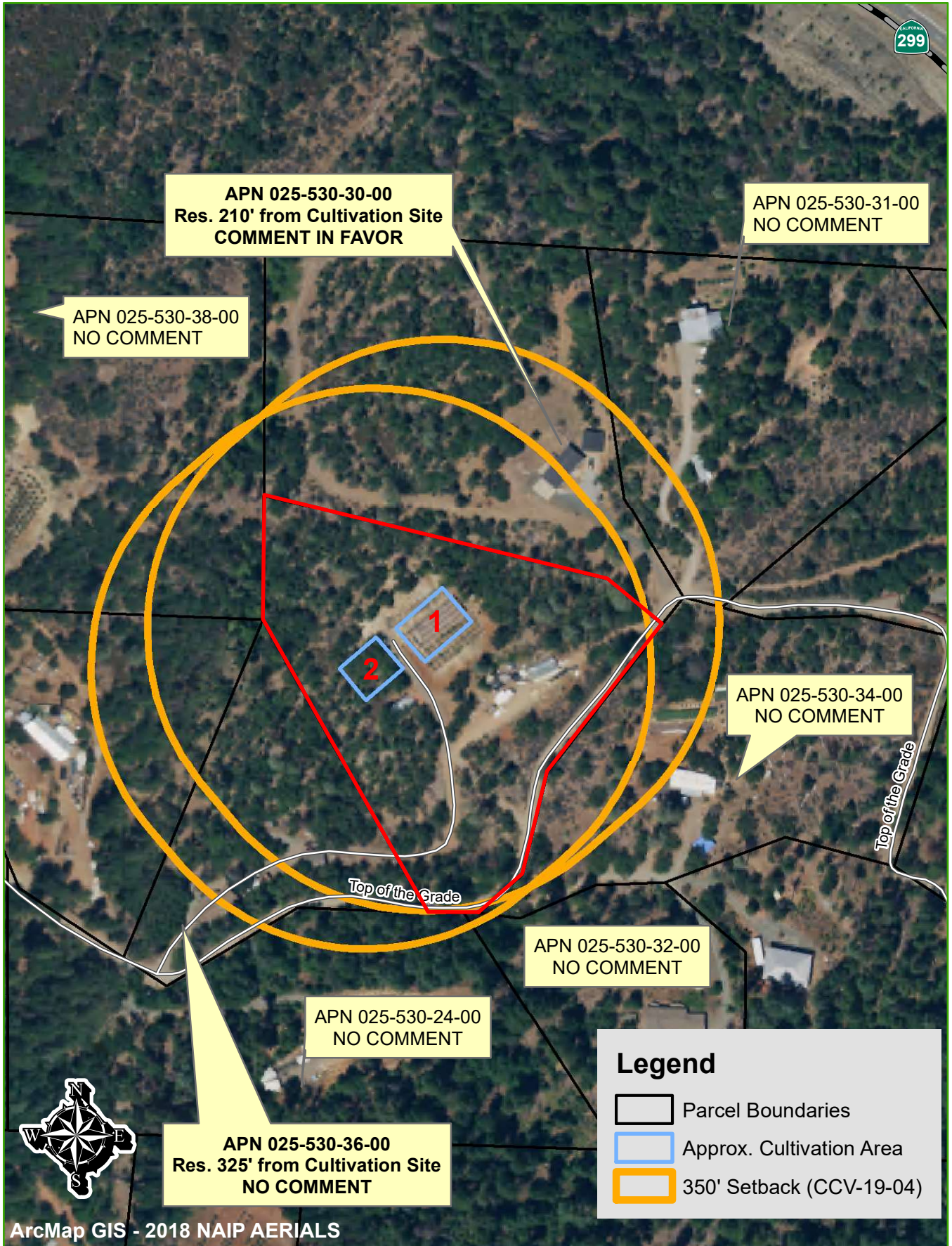
ATTACHMENT 2



Total Premises Area:
 340' x 328'
 = 111,520 sq. ft.

Total Flower Canopy Area:
 $6' \times 6' = 36' (106) + 7' \times 7' = 49' (96)$
Total = 8,520 sq. ft.

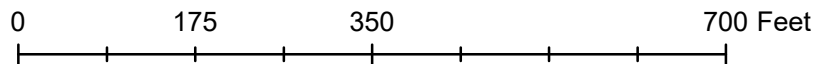
Total Veg Canopy Area:
 $20' \times 60' = 1,200'$
Total = 1,200 sq. ft.



Legend

- Parcel Boundaries
- Approx. Cultivation Area
- 350' Setback (CCV-19-04)

ArcMap GIS - 2018 NAIP AERIALS



ATTACHMENT 4 - SITE VISIT PHOTOS



Cultivation site 1



Cultivation site 2

ATTACHMENT 5

Bella Hedtke

From: Matt Hawkins <mattysnake@gmail.com>
Sent: Tuesday, March 26, 2019 7:56 PM
To: Bella Hedtke
Subject: Statement for 03/28/19 planning commission

Hello my name is Matt Hawkins and I am the owner of 866 Top of the Grade Douglas City. APN- 025-530-34-00 Mr. Chue Thao of 961 Top of the grade APN- 025-530-29-00 has been my neighbor for several years now, I would like to offer this letter in support of him receiving his variance. He is a fine neighbor and I commend him for coming into compliance. Thanks very much
Matt Hawkins