



**Board of Adjustment
October 15, 2019**

Staff Report

TO: Board of Adjustment
FROM: Ryan Lipp, AICP – Senior Planner
SUBJECT: Case# BOA-2019-09: Variance 1107 E 13th Street

Request for variance from the provisions of Article 4, Table 4.7-1 of the Unified Development Ordinance (UDO) of the side setback from what is required in the Residential Medium Density (RM-2) Zoning District to allow subdivision into three (3) parcels.

A. Actions Requested by Board of Adjustment

1. Motion to accept the City's exhibits into the record
2. Motion to approve/revise Findings of Fact proposed by Planning Staff
3. Motion to approve (approve with conditions) (deny) the issuance of the variance and Order for Approval

B. Required Votes to Pass Requested Action

Six votes are required to approve or deny the requested actions.

C. Background

The applicant, Brandy Sellers, is requesting a variance from Article 4, Table 4.7-1 of the Unified Development Ordinance, which requires a minimum side setback of 10 feet for property located within the Residential Medium Density (RM-2) zoning district in order to subdivide the parcel into three (3) parcels. There is an existing home on the property that was constructed prior to the establishment of the minimum side setback that encroaches into the setback. The side yard setback for this home is 5.3 feet. For any change in the lot layout to be allowed, a variance from the minimum required side setback must be approved. The current home has existed on the property since 1947. The applicant has renovated the existing home and plans on building 2 additional homes on the remaining two lots. These additional homes will be built in compliance with all applicable setback and lot dimensional requirements of the UDO.

D. Fiscal Considerations

None

E. Policy Issues

Staff Findings of Fact - Based on application review

Yes No

Unnecessary hardship would result from the strict application of the ordinance.

The current home has existed on the subject parcel since 1947. The owner of the property is requesting the variance in order to subdivide the parcel into 3 separate parcels with the existing house remaining on one of these lots. Without the proposed variance, the City would be unable to approve the subdivision, as the existing structure would violate the current ordinance regulations for minimum side setback.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

The location of the house has not changed since its construction in 1947.

The hardship did not result from actions taken by the applicant or the property owner.

The applicant acquired the parcel in the current configuration. There is no record of any actions of the owner that caused the hardship. The location of the house has been unchanged since 1947.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved and will preserve its spirit.

The variance is consistent with the spirit, purpose, and intent of the UDO. The variance will bring the existing home into conformance and allow the construction of two additional homes.

Board's Findings of Fact - Based on application review and public hearing.

In order to determine whether a variance is warranted, the Board members must decide that each of the four criteria as outlined below has been met. If the Board members concur completely with the findings of the staff, no additional findings of fact are necessary, and the staff findings should be approved as part of the decision. However, if the Board members wish to approve different findings (perhaps as a result of additional evidence or testimony presented at the public hearing), alternate findings need to be included as part of the four criteria below. Should a variance be approved, the Board members may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

Yes No

Unnecessary hardship would result from the strict application of the ordinance.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

The hardship did not result from actions taken by the applicant or the property owner's own actions.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

F. Legal Issues

None

G. Recommendation

Based on the above findings, staff recommends **approval** of the variance. However, the Board of Adjustment should consider all facts and testimony after conducting the public hearing and render a decision accordingly.

H. Attachments

1. Variance Application
2. Vicinity Map
3. Zoning Map
4. 2030 Future Land Use and Character Map
5. Proposed Subdivision
6. List of Notified Properties
7. Notice to Adjacent Property Owners
8. Posted Public Notice

I. Issue Reviewed By:

Planning Director	X
City Manager	X
City Attorney	X



Planning and Zoning Commission and Board of Adjustment
General Application Form
(Not for Site Plan Review Submittals)

Type of Action Requested (Check One):

- | | | | |
|------------------------|-------------------------------------|----------------------------------|-------|
| Variance | <input checked="" type="checkbox"/> | SIA Application | _____ |
| Conditional Use Permit | _____ | Nonconformity Adjustment | _____ |
| Subdivision Exception | _____ | Watershed Boundary Modification | _____ |
| Zoning Text Amendment | _____ | Zoning Map Amendment | _____ |
| Appeal | _____ | Conditional Zoning Map Amendment | _____ |

Applicant: Brandy Sellers Owner: 704 Builders Inc

Address: 3390 Keady Mill Loop Address: 3390 Keady Mill Loop
Kannapolis NC 28081 Kannapolis NC 28081

Telephone: 704-791-9822 Telephone: 704-791-9822

Email: brandy.sellersusa@yahoo.com Email: brandy.sellersusa@pho.com

Legal relationship of applicant to property owner: Applicant is one of the partners in 704 Builders

Property Location/Address: 1107 E 13th St Kannapolis NC 28083

Tax Parcel Number: 151010 Zoning District: RM-2 Acreage of Site: .84

Brandy Sellers
Applicant Name (Print)

704 Builders Inc
Property Owner Name (Print)

[Signature] 9-4-19
Applicant Signature & Date

[Signature] 9-4-19
Property Owner Signature & Date

The agenda deadline is the first day of the month preceding the month of the meeting. To be considered for placement on the next meeting agenda, the signed application, application fee, and five (5) copies of any required site plans for staff review must be submitted by the deadline. However, to remain on the next meeting agenda, fifteen (15) copies of such plans, determined by staff to conform to all ordinance standards, must be submitted at least ten (10) days before the meeting date. All fees are nonrefundable and help to cover administrative and notification costs.

For Staff Use Only:

Filing Fee: \$325.00

Receipt # M-11235

Application No.: BOA-2019-09

Date Submitted (Complete): 9/10/2019

SDWA



CITY OF KANNAPOLIS PLANNING DEPARTMENT

APPLICATION FOR A VARIANCE

I, Brandy Sellers, hereby petition the Board of Adjustment for a Variance from the literal provisions of the Unified Development Ordinance because, under the interpretation given to me by the Planning Administrator, I am prohibited from using the parcel of land described in the attached form (General Application Form) in a manner shown by the plot plan attached to that form. I request a Variance from the following provisions of the ordinance (cite paragraph numbers): Unified Development Ordinance

so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application Form or, if the plot plan does not adequately reveal the nature of the Variance, as more fully described herein:

The applicant is requesting a Variance in order to subdivide the lot into 3 parcels. We need the Variance in order to get approval to subdivide the lot. The applicant has renovated the current house and plans to build 2 additional homes. The current house has existed on the property since 1947.

Factors Relevant to the Issuance of a Variance

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a Variance. Under the State Enabling Act, the Board is required to reach four conclusions before it may issue a Variance: (1.) that unnecessary hardship would result from the strict application of the ordinance; (2.) that the hardship results from conditions that are peculiar to the property, such as location, size, or topography; (3.) that the hardship did not result from actions taken by the applicant or the property owner; and (4.) the requested variance is consistent with the spirit, purpose, and intent, of the ordinance, such that public safety is secured, and substantial justice is achieved. In the spaces provided below, indicate the *facts* that you intend to show and the *arguments* that you intend to make to convince the Board that it can properly reach these four required conclusions.

1. Unnecessary hardship would result from the strict application of the ordinance.

It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property. [It is *not* sufficient that failure to grant the Variance simply makes the property less valuable.] (State facts and arguments in support of this conclusion.)

Without the Variance, the applicant will not be able to build the 2 additional homes that we had planned for the lots. The Variance is needed because the existing home on the property does not meet the setbacks on the side of the house.

2. **The hardship results from conditions that are peculiar to the property, such as location, size, or topography.** Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance. (State facts and arguments to show that the Variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the Variance is granted, will not substantially detract from the character of the neighborhood.)

The current home was built in 1947 and was kept in the family until we purchased the property this year. The Variance request will still conform to the surrounding properties. The new homes will be a beautiful addition to the neighborhood.

3. **The hardship did not result from actions taken by the applicant or the property owner.** The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. (State facts and arguments in support of this conclusion.)

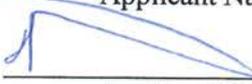
The current home was built around 1947.

4. **The requested Variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.** (State facts and arguments to show that, on balance, if the Variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

The requested variance is consistent with the spirit, purpose, and intent of the ordinance.

I certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief.

Brandy Sellers
Applicant Name (Print)


Applicant Signature

9-4-19
Date

9-4-19
Date

Note: The Board may impose reasonable conditions upon the granting of any Variance to ensure that the public health, safety, and general welfare shall be protected and substantial justice has been done.

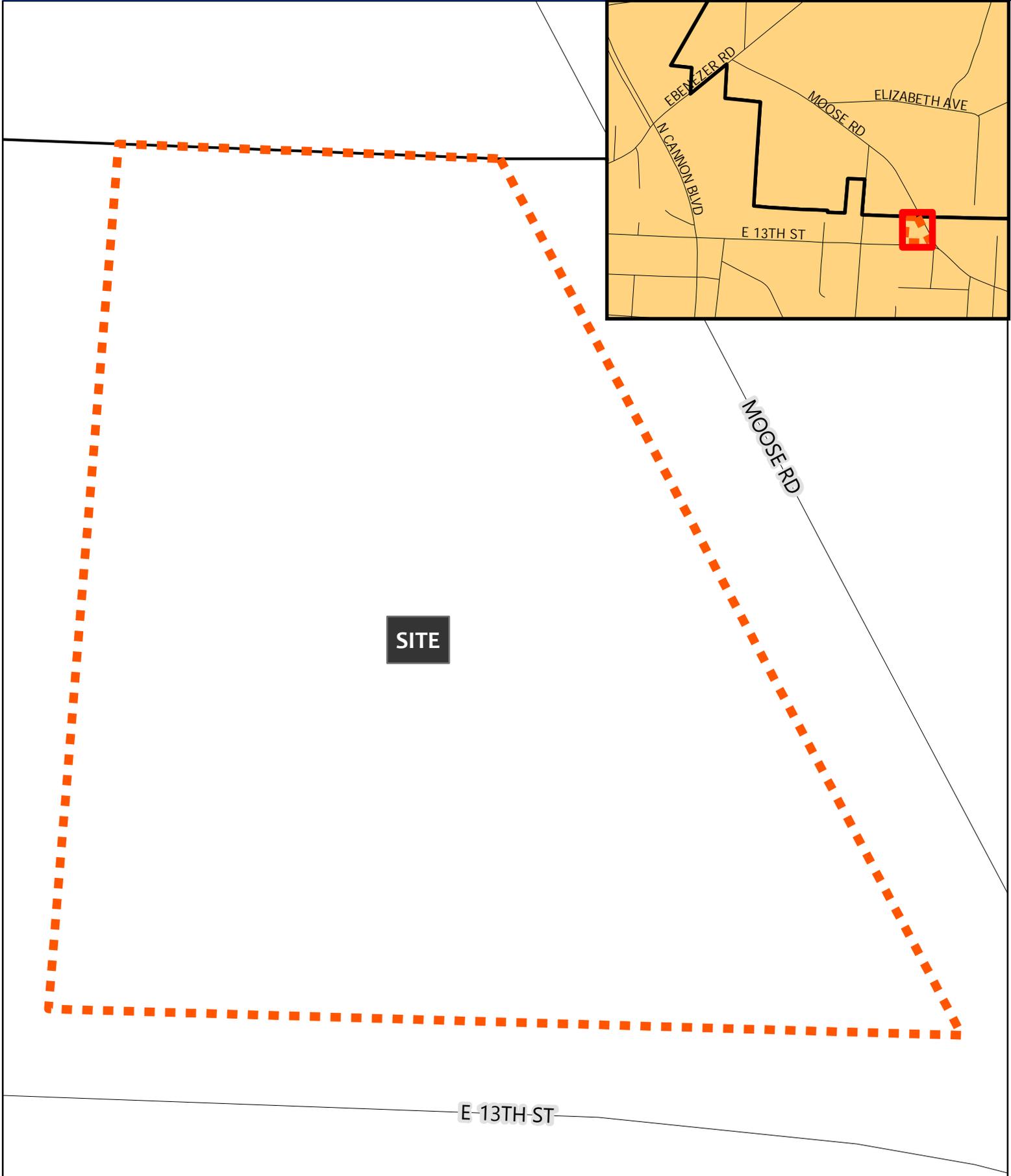
Calls or conversations with Board of Adjustment members prior to the meeting may disqualify members from participation at the Board meeting. For the testimony of supporters not to be considered hearsay, they must be present at the meeting. Petitions and written consent may be accepted by the Board, but cannot be used as a basis for decision.

Fee: Please refer to fee schedule to determine applicable fees. All fees are nonrefundable and help to cover administrative and notification costs.



Vicinity Map

Case Number: BOA-2019-09
Applicant: Brandy Sellers
Address 1107 E 13th St.



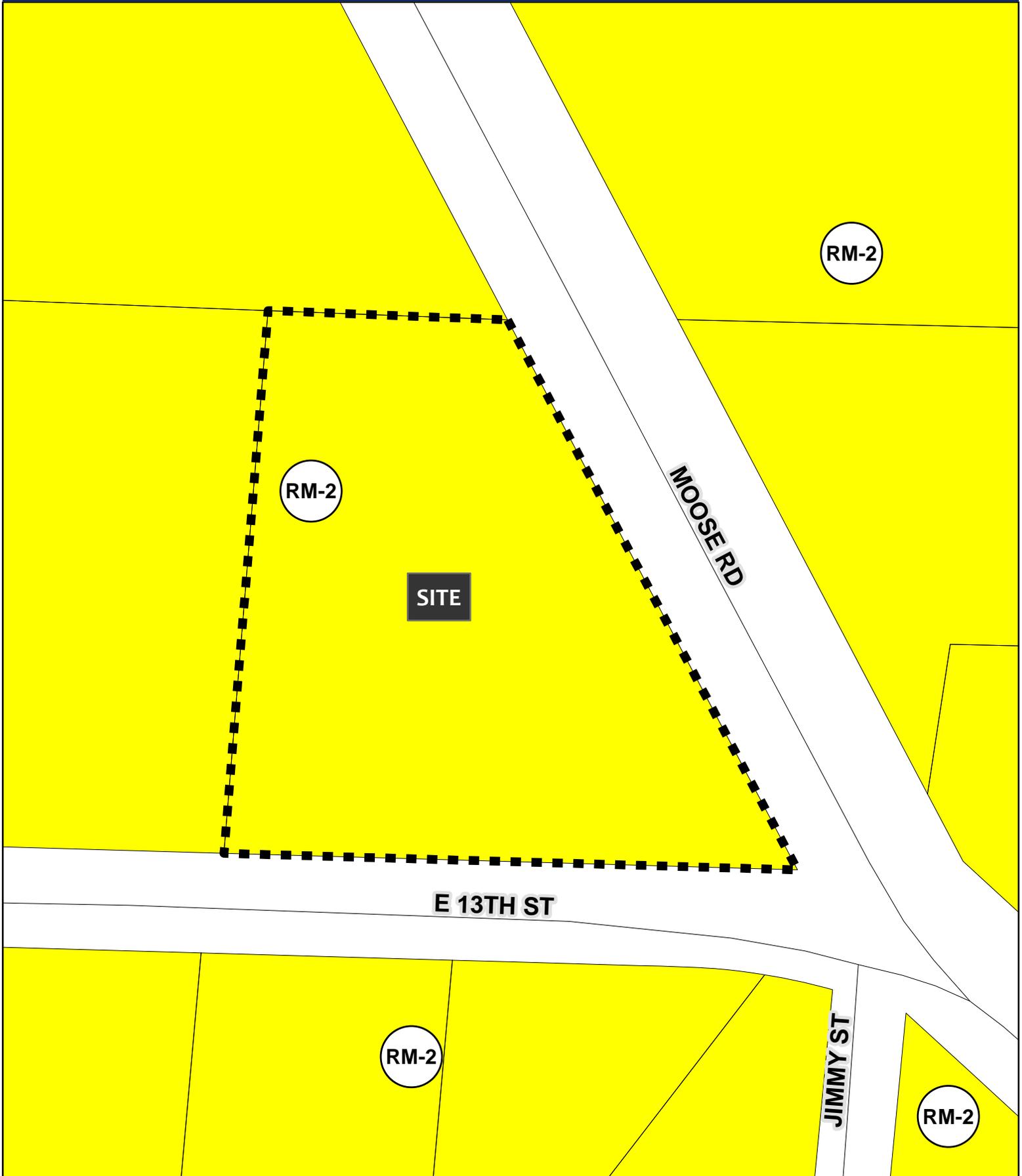


Kannapolis Current Zoning

Case Number: BOA-2019-09

Applicant: Brandy Sellers

Address 1107 E 13th St.



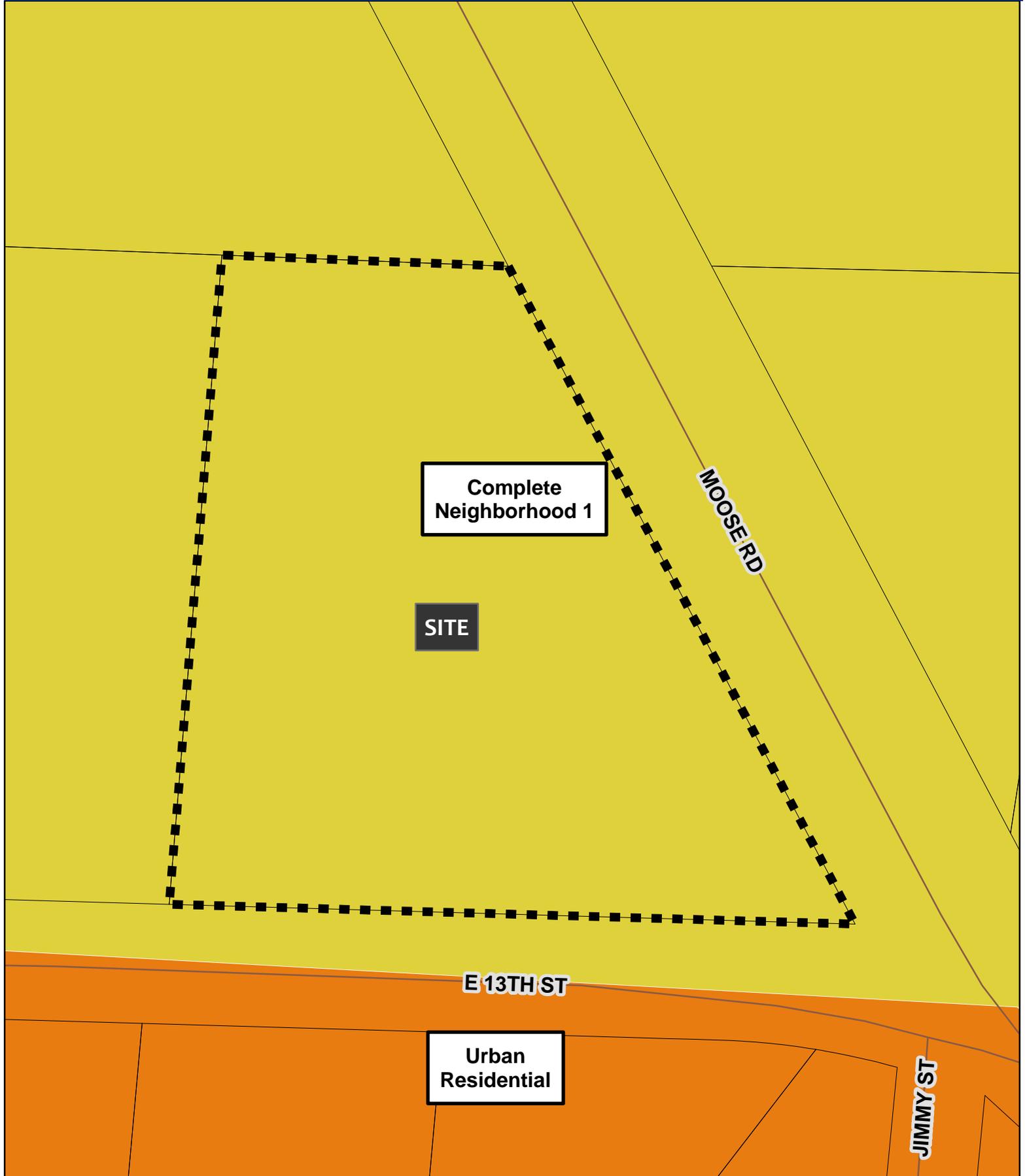


Kannapolis 2030 Future Land Use Map

Case Number: BOA-2019-09

Applicant: Brandy Sellers

Address 1107 E 13th St.

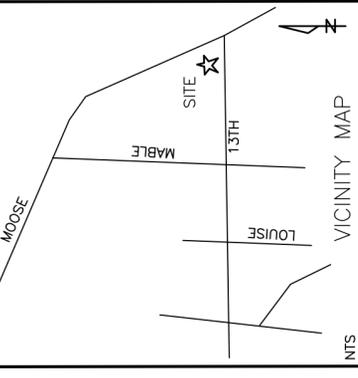


LINE BEARING DISTANCE
L1 N 86°56'07" W 15.80'

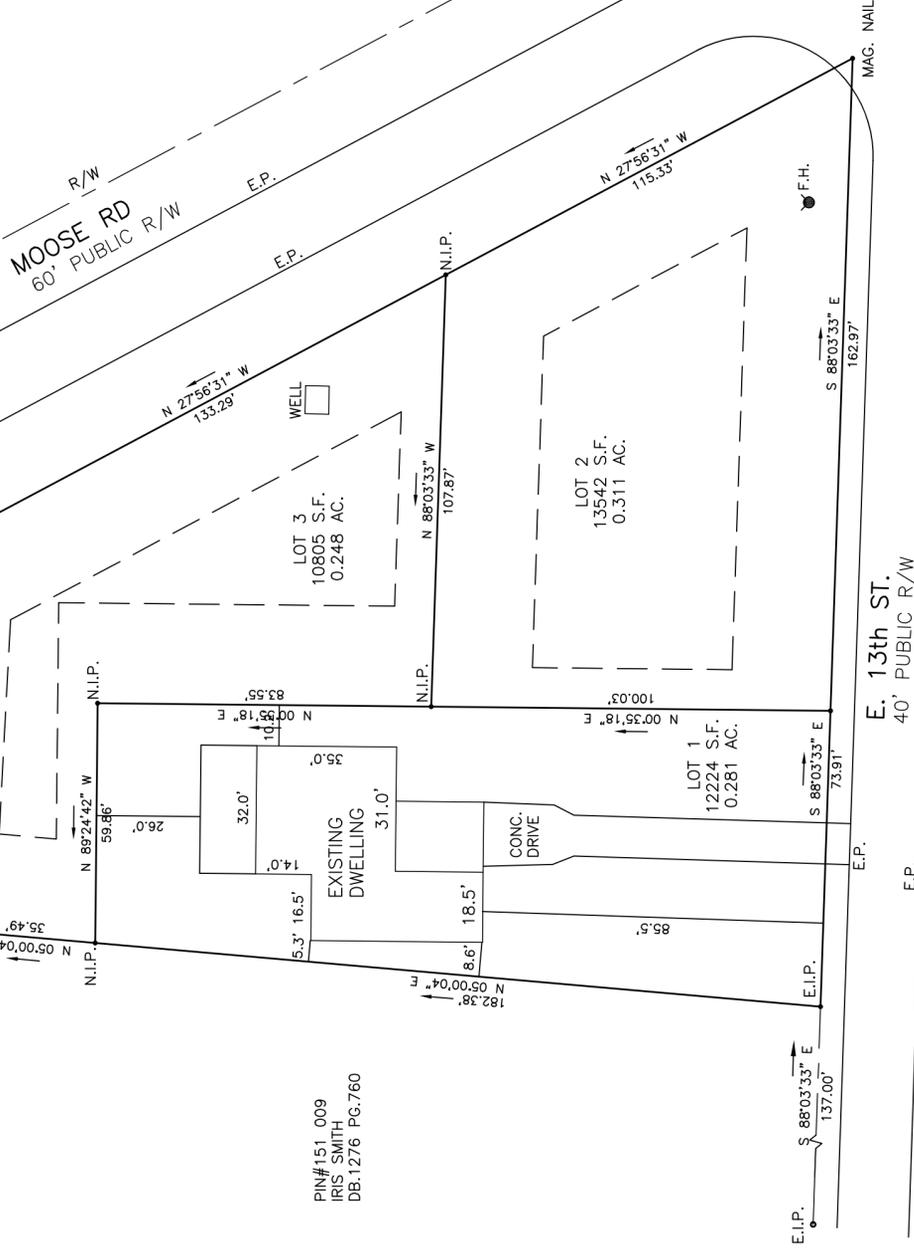
PIN#143 062
ANN MARTIN
DB.1244 PG.943

PIN#151 009
IRIS SMITH
DB.1276 PG.760

DB.1276 PG.760



- Notes:
1. Iron pins at all lot corners unless otherwise noted.
 2. Property may be subject to recorded or unrecorded rights-of-way or easements not observed.
 3. Property is not located within 2000' of a NCGS monument.
 4. Approval of this plat does not permit the owner the right to alter pipe, fill, or relocate any existing drainage feature located on the property without submitting engineering plans for review and approval to the City of Kannapolis and other appropriate state agencies.
 5. This property is served with public water and sewer.
 6. Property is not located in a flood hazard area per FIRM MAP #3710562400L dated:11/16/2018
 7. Water and sewer are available for these lots in certain locations. Sanitary Sewer laterals and water meters are not to be located in driveways.
 8. Driveway locations shall be per Kannapolis UDO D.8 Driveway design Standards.



ZONING: RM-2
FRONT 25'
SIDE 10'
REAR 25'

LEGEND

- FIRE HYDRANT
- EXISTING IRON PIN
- NEW IRON PIN
- COMPUTED POINT
- POWER POLE
- EDGE OF PAVEMENT
- RIGHT OF WAY
- SETBACKS
- PROPERTY LINE

SURVEYOR'S CERTIFICATION

I, Christopher S. Sparks certify that this map was drawn by me from an actual survey made by me deed description recorded in Book 1327 Page 389, etc.) (other); (that the ratio of precision as calculated by latitudes and departures is 1:10,000+), that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____ Page 47-50, as amended.

Witness my hand and seal this 9TH day of JUNE, AD 2019.

Signature

Professional Land Surveyor
Registration Number _____

This plat is of another category, such as the recombination of existing parcels, court ordered survey, or other exception to the definition of subdivision.

OWNER:
704 BUILDERS INC.
3390 KEADY MILL LOOP
KANNAPOLIS N.C. 28081

PRELIMINARY
NOT FOR
CONVEYANCES
RECORDATION OR SALES



EXEMPTION PLAT
OF

1107 E. 13TH ST.
KANNAPOLIS N.C. 28083

PID#151 101
DB.1327 PG.389
NUMBER 4 TOWNSHIP
ROWAN COUNTY, N.C.

DESCRIPTION:
RECORD PLAT

Scale: 1" = 30' Date: 6/09/19



OWNER _____ DATE _____

FINAL PLAT APPROVAL
City Of Kannapolis

I hereby certify that this plat is exempt from the subdivision regulations of the City of Kannapolis due to its exclusion from the definition of a subdivision as established by NCGS 160a-376(g)

PLANNING DIRECTOR _____ DATE _____

STATE OF NORTH CAROLINA
CABARRUS COUNTY

I, _____ Review Officer of CABARRUS County certify that this map or plat to which this certification is affixed meets all statutory requirements for recording.

REVIEW OFFICER _____ DATE _____

EASEMENT STATEMENT

ENCROACHMENTS OF ANY STRUCTURE OR LANDSCAPING, INCLUDING BUT NOT LIMITED TO DRIVEWAYS, POOLS, TRAILS, WELLS, RESERVOIRS OR OTHER OBSTRUCTIONS, WHICH WOULD INTERFERE WITH FREE, EASY AND CLEAR ACCESS TO UTILITIES OF ON ANY EASEMENTS; ARE, DOING MAY PROHIBITED. HOWEVER, CERTAIN STRUCTURES, FILLING OR GRADING ARE PERMITTED. THE CITY OF KANNAPOLIS MAY AUTHORIZE AN ENCROACHMENT AGREEMENT BUT ONLY AFTER REVIEW AND APPROVAL OF DETAILED PLANS.

Public Utility Easement Statement

All open space depicted or identified on this plat shall be subject to and encumbered by a general utility easement in gross benefiting the City of Kannapolis. The City of Kannapolis, its officers, employees, successors and assigns shall have the right of ingress, egress and repair over any property designated on this plat as open space for the purposes of locating, laying, constructing, reconstructing, inspecting, operating, extending, maintaining, and otherwise keeping open and in good repair any public municipal utility including, but not limited to, water systems, sanitary sewer systems, and public stormwater systems

OWNNAME	TAXADD1	CITY	STATE	ZIPCODE
RONALD & EMILY STEELE	1401 MOOSE RD	KANNAPOLIS	NC	28083-2872
ANN H MARTIN & SHIRLEY M TILL	1301 MOOSE RD	KANNAPOLIS	NC	28083-0000
PATRICIA K WILSON	108 FALL ST	RICHFIELD	NC	28137-5783
DEBORAH SECHLER	1401 MOOSE RD	KANNAPOLIS	NC	28083-2872
JIMMY BRANTLEY	1103 E 13TH ST	KANNAPOLIS	NC	28083-2828
IRIS B SMITH	1105 E 13TH ST	KANNAPOLIS	NC	28083-0000
ERIC & BEVERLY BLACKWELDER	1400 MOOSE RD	KANNAPOLIS	NC	28083-2804
DOROTHY COBLE	1102 E 13TH ST	KANNAPOLIS	NC	28083-2829
PATRICIA MCDERMOTT	1104 E 13TH ST	KANNAPOLIS	NC	28083-0000
WILLIAM & LINDA HARVEY	1106 E 13TH ST	KANNAPOLIS	NC	28083-2829
EARL & LOUISE ROBERTS	4524 WRANGLER DR SW	CONCORD	NC	28027-3970
TAMMY R COMPTON	3146 SIMMONS ST	KANNAPOLIS	NC	28083-0000
CYNTHIA S GRIGGS	213 IDLEWOOD DR	KANNAPOLIS	NC	28083-3625
DAVID O'BRYAN	102 YACHT HARBOR DR UNIT 364	PALM COAST	FL	32137 3431
EDDIE B DURHAM	1311 LOWRANCE AVE	KANNAPOLIS	NC	28081-5823
BRANDY SELLERS	3390 KEADY MILL LOOP	KANNAPOLIS	NC	28081
SONYA BALIN	1108 E 13TH ST	KANNAPOLIS	NC	28083



September 24, 2019

Dear Property Owner,

Please be advised that the City of Kannapolis Board of Adjustment will conduct a quasi-judicial public hearing at 6:00 PM on Tuesday, October 15, 2019 at City Hall, located at 401 Laureate Way, for the following case:

BOA-2019-09 - Variance – 1107 E 13th Street

This public hearing is to consider a request for a variance from Article 4, Table 4.7-1. of the Unified Development Ordinance, which requires minimum dimensional requirements for property located in the Residential Medium Density (RM-2) zoning district. The applicant is requesting a variance from the side yard setbacks which will allow subdividing the property into three (3) parcels. The subject property is approximately .84 +/- acres and is more specifically identified as Rowan County Parcel Identification Numbers 151 010. **(Please see reverse side of this letter for vicinity map showing the location of this property.)**

As an adjacent property owner, you are being notified of this public hearing in accordance with the requirements of the Kannapolis UDO; and are invited to attend the public hearing and present testimony, should you desire, to the Board of Adjustment.

Should you have any questions about the public hearing or request, please do not hesitate to call the Planning Department at 704.920.4350

Sincerely,

Ryan Lipp
Senior Planner

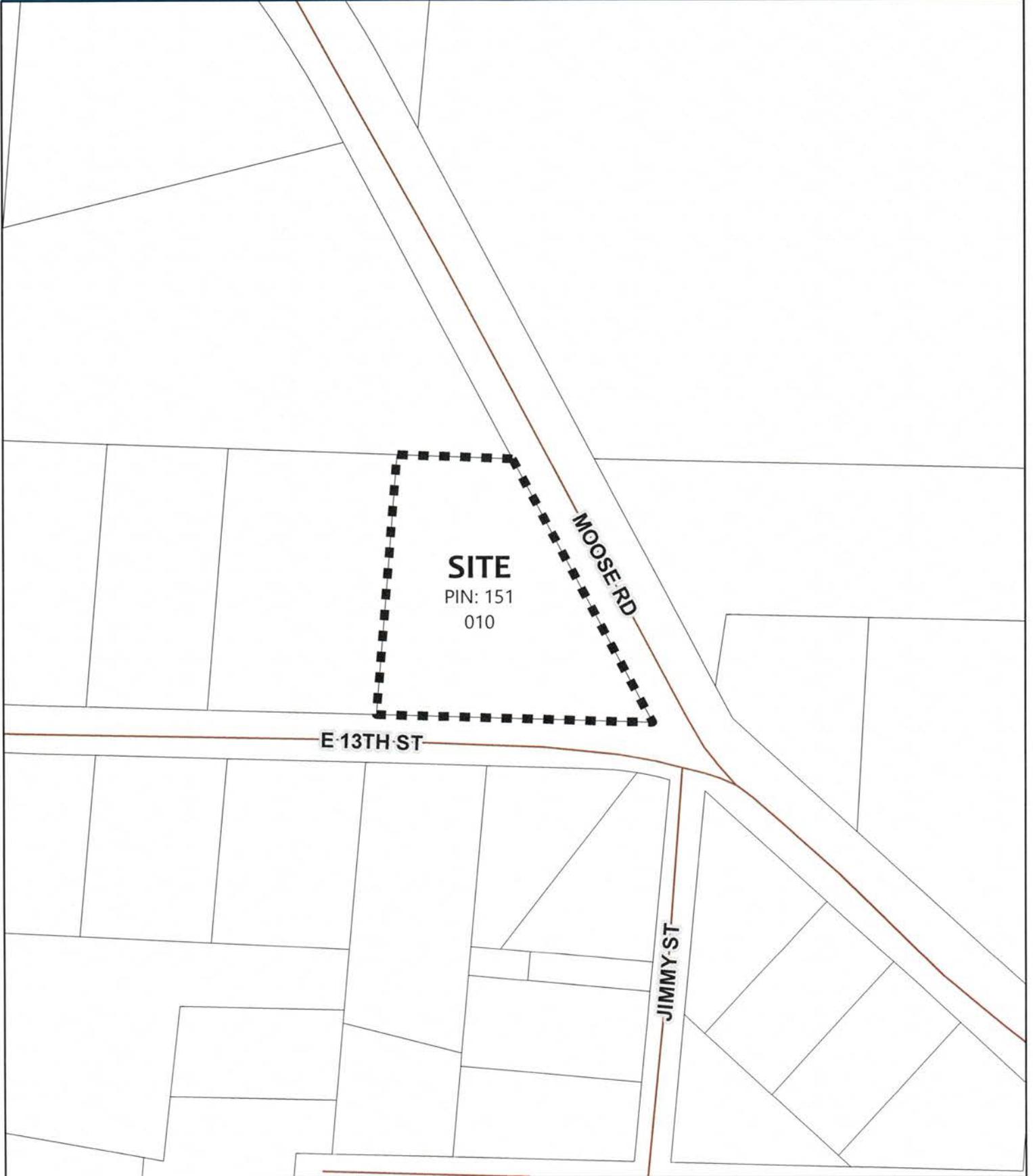
Enclosure

The meeting is accessible to people with disabilities. To request special accommodation in advance, contact the City's ADA Coordinator at 704.920.4302.



Variance

Case Number: BOA-2019-09
Applicant: Brandy Sellers
Address 1107 E 13th St.



STOP

KANNAHVILLE
BOARD OF
ADJUSTMENT
PUBLIC HEARING
INFORMATION
CALL 704-920-4350
CASE # 9.09





BOARD OF

ADJUSTMENT

**PUBLIC HEARING
INFORMATION**

CALL 704-920-4350

CASE # BOA - 2019 - 09

1107