

1 **CITY OF KANNAPOLIS, NC**  
2 **BOARD OF ADJUSTMENT**

3  
4 **Minutes of Meeting**  
5 **Tuesday June 18, 2019**

6  
7 The Board of Adjustment met on Tuesday June 18, 2019 at 6:00 PM at City Hall, 401 Laureate Way,  
8 Kannapolis, North Carolina.

9  
10 **Board Members Present:** Jonathan Farmer, Chairman  
11 James Palmer, Vice-Chairman  
12 Andrew Baker  
13 Boyd Hardin  
14 Joann Crosby  
15 Scott Trott

16  
17 **Board Members Absent:** Ryan French  
18 Colby Meadows  
19 Jeff Parker

20  
21 **Staff Present:** Ryan Lipp, Senior Planner  
22 Gretchen Coperine, AICP Senior Planner  
23 Timothy Drumm, City Engineer  
24 David Jordon, IT

25  
26 **City Attorney:** Walter Safrit III

27  
28 **Visitors Present:** Jeff Efird Jr. Jeff Efird Sr. Joshua Masters  
29 Marla Sklanoff Tina Powell Brook Van Sloter  
30 Greg Lafferty Visay Maisuria Melissa Kay  
31 Barry Lipscomb Natasha Lipscomb

32  
33 **CALL TO ORDER**

34 Chairman Farmer called the meeting to order at 6:00pm.

35  
36 **ROLL CALL AND RECOGNITION OF QUORUM**

37 Recording Secretary Pam Scaggs, called the roll and presence of a quorum was recognized.

38 **APPROVAL OF AGENDA**

39 Chairman Farmer asked for a motion to accept the Agenda which was made by Mr. Palmer, seconded by  
40 Mr. Hardin and the motion was unanimously approved.

41  
42 **APPROVAL /CORRECTION OF MINUTES**

43 Chairman Farmer asked for a motion to approve the May 21, 2019 meeting minutes which was made by  
44 Mr. Palmer, seconded by Mr. Baker and the motion was unanimously approved.

45  
46 **SWORN IN FOR TESTIMONY**

47 Ryan Lipp, Gretchen Coperine, Timothy Drumm, Jeff Efird Sr., Joshua Masters, Marlo Sklanoff, and  
48 Gregg Lafferty.

49

1 **PUBLIC HEARING**

2  
3 **BOA-2019-04 – Variance – 289 James Street**

4 Senior Planner Ryan Lipp gave a PowerPoint presentation regarding a request for a variance and  
5 provided the application details for case BOA-2019-04 (Exhibit 1). He noted the applicant, Parcel  
6 Identification Number, and dates that public notice was provided. Mr. Lipp stated that the applicant is  
7 requesting a variance from Table 4.7-1 regarding minimum lot depth in the Residential Village (RV)  
8 zoning district.  
9

10 Mr. Lipp directed the Board’s attention to the Vicinity, Zoning and Future Land Use maps further  
11 detailing the location, zoning and future land use per the 2030 Plan. He stated that the applicant  
12 proposed to subdivide the subject property into four parcels and in doing so, Public Works would  
13 require a dedicated right-of-way that would further diminish the lot depth. Mr. Lipp directed the  
14 Board’s attention to site photos and a preliminary site plan showing the proposed subdivision as well  
15 as the required right-of-way.  
16

17 Mr. Lipp reviewed the Policy Issues and staff findings:  
18

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

20 Staff Assessment

21 The subject property has been in existence since 1948. The owner of the property is requesting the  
22 variance in order to subdivide the property into 4 parcels. Without the proposed variance, the City  
23 would be unable to approve the subdivision because no lots would meet the minimum lot depth.  
24 Without this variance, the applicant would be able to construct a single-family dwelling, a duplex or  
25 a triplex on this property.  
26

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

29 Staff Assessment

30 The lot depth of the property has not changed since 1948. The required dedication of right-of-  
31 way would further reduce the depth of the existing non-conforming lot.  
32

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

34 Staff Assessment

35 There is no record of any actions of the owner that caused the hardship.  
36

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

40 Staff Assessment

41 The variance is consistent with the spirit, purpose, and intent of the UDO.  
42

43 Mr. Lipp indicated that staff is recommending approval of the variance request and reminded the Board  
44 of the actions requested of them. He concluded his presentation and made himself available for questions.  
45

46 Mr. Trott asked if the required right-of-way will allow for sidewalks or planting strips ? Senior Planner  
47 Gretchen Coperine introduced herself and stated that the required right-of-way will satisfy the minimum  
48 road width requirement and is required of all new development but that sidewalks are not being required  
49 since the proposed subdivision does not connect with any other development.  
50

1 Mr. Palmer noted that the UDO has requirements for setbacks and right-of-way's but asked if there was  
2 a minimum acreage requirement for property located within the RV zoning district? Mr. Lipp responded  
3 that there is a minimum lot size requirement but did not have a copy of the UDO for reference so could  
4 not provide the specific lot size requirement. He stated that all other minimum requirements for the  
5 variance request have been met with the exception of lot depth.

6  
7 There being no questions or comments for staff, Chairman Farmer opened the Public Hearing.

8  
9 Greg Lafferty, New Life Developers, PO Box 1096, Concord, NC made himself available for questions.

10  
11 There being no questions or comments, Chairman Farmer closed the Public Hearing.

12  
13 Chairman Farmer asked for a motion to accept the City's exhibits into the record which was made by Ms.  
14 Crosby, seconded by Mr. Trott and the motion was unanimously approved.

15  
16 Chairman Farmer asked for a motion to approve or revise the Findings of Fact. Mr. Palmer made the  
17 motion to approve the Findings of Fact as presented by staff, which was seconded by Mr. Baker and the  
18 motion was unanimously approved.

19  
20 Chairman Farmer asked for a motion to approve or deny the variance request. Mr. Palmer made a motion  
21 to approve the variance, which was seconded by Mr. Baker and the motion was unanimously approved.

22  
23 **BOA-2019-05 – Conditional Use Permit – Vance Street**

24 Senior Planner Ryan Lipp gave a PowerPoint presentation regarding a request for a Conditional Use  
25 Permit (CUP) to allow for the construction of eleven (11) single-family homes on Vance Avenue. He  
26 provided the application details for case BOA-2019-05 (Exhibit 2) noting the applicant, Parcel  
27 Identification Number, and dates that public notice was provided.

28  
29 Mr. Lipp directed the Board's attention to the Vicinity, Zoning and 2030 Future Land Use maps further  
30 detailing the location, current zoning and recommended land uses for the subject parcels. He stated  
31 that table 4.6-1 of the UDO requires a CUP for single-family detached homes and directed the Board's  
32 attention to a rendering further detailing location of the homes.

33  
34 Mr. Lipp reviewed the Policy Issues and staff findings:

- 35  
36 1. **The proposed conditional use will be in harmony with the area in which it is to be located and  
37 in general conformance with the City's Land Use Plan.**

38 Staff Assessment

39 The subject property is within the "Urban Residential" Character Area as designated on the Future  
40 Land Use and Character Map in the *Move Kannapolis Forward 2030 Comprehensive Plan*. Urban  
41 Residential Character Areas allow single family detached residential as a primary use.

42  
43 The proposed use is compatible with the character intent of the Urban Residential Character Area  
44 as well as comparable to the existing single-family homes and surrounding area.

- 45  
46 2. **Adequate measures shall be taken to provide ingress and egress so designed as to minimize  
47 traffic hazards and to minimize traffic congestion on the public roads.**

48 Staff Assessment

49 The site on which the uses are being proposed has access to Dale Earnhardt Blvd. via Vance St.  
50 There is currently adequate ingress and egress to the site and the increase in density should have  
51 a minimal effect on congestion.

1 3. **The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust,**  
2 **smoke or gas.**

3 Staff Assessment

4 No vibration, odor, dust, smoke or gas is expected. No noise beyond typical community recreation  
5 uses is anticipated.  
6

7 4. **The establishment of the proposed use shall not impede the orderly development and**  
8 **improvement of surrounding property for uses permitted within the zoning district.**

9 Staff Assessment

10 There are existing single-family homes to the north with adequate room for development to the  
11 south. The improvement of surrounding property would not be impeded by the development of the  
12 subject property.  
13

14 5. **The establishment, maintenance, or operation of the proposed use shall not be detrimental to**  
15 **or endanger the public health, safety, or general welfare.**

16 Staff Assessment

17 There is no apparent danger or detriment to the overall public safety, health and welfare resulting  
18 from the proposed uses. The proposed development is subject to all the requirements of the  
19 Unified Development Ordinance.  
20

21 6. **Compliance with any other applicable Sections of this Ordinance.**

22 Staff Assessment

23 The proposed use shall comply with all sections of the City of Kannapolis Unified Development  
24 Ordinance, conditions of approval, and any other applicable local, state and federal regulations. It is  
25 understood by the applicant that unless specifically relieved of a requirement, in writing, all UDO  
26 requirements, including compliance with the Technical Review Committee site plan review and  
27 approval process, must be met.  
28

29 Mr. Lipp indicated that staff is recommending approval of the CUP with conditions and read those  
30 conditions into the record:  
31

- 32 1. The number of single-family detached dwelling units permitted by this CUP shall be  
33 limited to eleven (11).  
34 2. Street along the property frontage must be upgraded to city standards which include the  
35 following:  
36 a. 2.5' curb and gutter  
37 b. 6' planting strip  
38 c. 5' sidewalk  
39 d. 11' lane width  
40 3. Additional right-of-way of 30' from the center of the road on the property side.  
41 4. Developer is responsible for ensuring connectivity of all parcels affected by required  
42 sewer line improvements.  
43

44 He concluded the presentation, reminded the Board of the actions requested of them and made himself  
45 available for questions.  
46

47 Mr. Trott asked if the 6" planting strip shown in the PowerPoint presentation was a typo? Mr. Lipp  
48 responded that it was a typo, that the UDO requires a 6-foot planting strip and is a condition of approval.  
49

50 Mr. Palmer asked for confirmation that eleven (11) homes will be constructed on the same property as  
51 the existing four (4) homes shown on the maps? Mr. Lipp responded that the existing homes will be

1 demolished and that 11 homes are proposed as part of the CUP request. Mr. Palmer noted that the homes  
2 are shown to have rear access and asked where the egress/ingress access will be located and if the  
3 proposed homes are townhomes? Mr. Lipp replied that egress/ingress had not been established but  
4 advised that the applicant is present and could respond to that question. He added that the proposed  
5 homes will be detached single-family homes and will not be townhomes.  
6

7 There being no questions or comments for staff, Chairman Farmer opened the Public Hearing.  
8

9 Joshua Masters, 5119 Teakwood Drive, identified himself as the applicant and made himself available  
10 for questions. He thanked the Board for their considerations.  
11

12 There being no further questions or comments, Chairman Farmer closed the Public Hearing and asked  
13 for a motion to accept the City's exhibits into the record which was made by Mr. Palmer, seconded by  
14 Mr. Hardin and the motion was unanimously approved.  
15

16 Chairman Farmer asked for a motion to approve or revise the Findings of Fact. Mr. Baker made the  
17 motion to approve staff findings which was seconded by Mr. Palmer and the motion was unanimously  
18 approved.  
19

20 Mr. Palmer stated that he agrees that staff findings are appropriate but asked that the record reflect that  
21 he thinks 11 homes seems too dense.  
22

23 Chairman Farmer asked for a motion to approve or deny the request for a Conditional Use Permit. Mr.  
24 Palmer made the motion to approve the CUP with the conditions stated by staff which was seconded by  
25 Mr. Baker and the motion was unanimously approved.  
26

27 City Attorney, Wally Safrit asked the applicant the status of the existing homes on the subject property?  
28 Mr. Masters responded that the homes are in a state of disrepair and will be demolished. Mr. Safrit  
29 asked if the existing homes are occupied? Mr. Masters replied that they are vacant.  
30

31 **BOA-2019-06 – Variance – 2089 Hambridge Avenue**

32 Senior Planner Ryan Lipp gave a PowerPoint presentation regarding a request for a variance and  
33 provided the application details for case BOA-2019-06 (Exhibit 3). He noted the applicant, Parcel  
34 Identification Number, and dates that public notice was provided. Mr. Lipp stated that approval of the  
35 request would allow the applicant to build a home 15.6-feet from the front property line versus the  
36 required 25-feet in the Residential Medium Density (RM-1) zoning district.  
37

38 Mr. Lipp directed the Board's attention to the Vicinity, Zoning and Future Land Use maps detailing the  
39 location, zoning and future land use per the 2030 Plan. He stated that the applicant originally submitted  
40 a zoning clearance application and a permit was issued based upon a surveyed site plan (displayed for  
41 the Board). Mr. Lipp explained that after permits were issued, the applicant began construction of the  
42 home but did not consider the curvature of the cul-de-sac where the home would be located. Due to a  
43 request from the bank for a foundation survey (also displayed for the Board), the developer realized  
44 that the foundation was encroaching into the front setback which is the reason for the variance request.  
45

46 Mr. Lipp reviewed the Policy Issues and staff findings:  
47

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

49 Staff Assessment

50 The subject property is located within the RM-1 Residential Medium Density District which allows  
51 for single-family dwellings. The applicant submitted a zoning clearance application that was shown

1 to be in compliance with the City of Kannapolis UDO. A Zoning Clearance Permit was issued based  
2 on the setbacks noted in the zoning clearance application.  
3

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

6 Staff Assessment

7 The applicant has indicated that the flood zone on the property creates difficulty in placement of  
8 the home. The difficulties that arise from building in a flood zone are shared by the neighborhood  
9 and entire community at large.  
10

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

12 Staff Assessment

13 A zoning clearance application was submitted indicating knowledge that there was flood plain on  
14 the property. Furthermore, the applicant completed an initial survey of the land prior to  
15 construction of the foundation whereby the applicant did not account for the curvature of the front  
16 property line leading to an improper location of the setback line. The foundation was then  
17 constructed using this improper reading, resulting in an encroachment into the required setback.  
18

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

22 Staff Assessment

23 The variance is not consistent with the spirit, purpose, and intent of the UDO. The variance would  
24 allow a front yard setback of 9.4-feet where 25-feet is required in the RM-1 Residential Medium  
25 Density District. It would not be in harmony with the existing nor any future homes in the  
26 neighborhood.  
27

28 Mr. Lipp indicated that staff is recommending denial of the variance request and reminded the Board of  
29 the actions requested of them. He concluded his presentation and made himself available for questions.  
30

31 Mr. Farmer referred to the Surveyed Site Plan as well as the Foundation Survey and asked for  
32 confirmation that the error occurred with the developer and not with staff? Mr. Lipp responded that the  
33 developer created the error.  
34

35 There being no questions or comments for staff, Chairman Farmer opened the Public Hearing.  
36

37 Jeff Efird Sr. 833 Maple Ridge Circle, Salisbury, NC., stated that he is co-owner of Blue Oak Construction  
38 along with his son, Jeff Efird Jr. Mr. Efird admitted that property is typically measured and marked by a  
39 surveyor but that he has experience with surveying so measured and marked the property lines himself.  
40 He stated that two markers were placed along the front, one showing the setback and the other showing  
41 the property line, and that he worked off the marker for the property line versus the marker for the front  
42 setback. Mr. Efird noted that the only reason why a foundation survey was performed was due to a request  
43 from the bank and that the error would not have been noticed until the house was constructed and final  
44 inspections completed. He stated that the only fix for the error is to request the variance or to destroy the  
45 foundation and start over.  
46

47 Mr. Baker asked Mr. Efird whether the foundation was complete? Mr. Efird responded "yes".  
48

49 Mr. Safrit asked what would happen if the variance were not approved? Mr. Efird responded that the  
50 foundation will be demolished and that they would start over.

1 Mr. Farmer asked if there was a possibility that the garage could be turned so that it was a front entrance  
2 versus a side entrance? Mr. Efird responded that the HOA only allows side entrance garages.  
3

4 Ms. Crosby asked why the bank requested a second survey? Mr. Efird replied that the bank needed to  
5 determine whether flood insurance would be required since the home will be located within the flood  
6 zone.  
7

8 Marlo Sklaroff, 2015 Hambridge Avenue, stated that she is the secretary of the Newman Manor Home  
9 Owners Association (HOA) and indicated that both the HOA board and the Architectural Control  
10 Committee met several times and unanimously voted to deny the variance request. She noted that she is  
11 representing the HOA. Ms. Sklaroff stated that Blue Oak Construction conveyed both verbally and in  
12 writing to the HOA that an error had been made in their measurements which resulted in an encroachment  
13 into the front setback. As a result of that error, the HOA requests that the variance request be denied. She  
14 submitted documents to the Board for the record.  
15

16 There being no further questions or comments, Chairman Farmer closed the Public Hearing.  
17

18 There was discussion among the Board and staff regarding sidewalks and landscaping.  
19

20 Chairman Farmer asked for a motion to accept the City's exhibits into the record. Mr. Palmer made a  
21 motion to accept the City's exhibits as well as those submitted by Ms. Sklaroff into the record which was  
22 seconded by Mr. Trott and the motion was unanimously approved.  
23

24 Chairman Farmer asked for a motion to approve or revise the Findings of Fact. Mr. Hardin made the  
25 motion to approve the Findings of Fact as presented by staff, which was seconded by Mr. Trott and the  
26 motion was unanimously approved.  
27

28 Chairman Farmer asked for a motion to approve or deny the variance request. Mr. Baker made a motion  
29 to approve the variance, which was seconded by Mr. Palmer. Mr. Safrit reminded the Board that they  
30 approved the Findings of Fact which recommended denial and that if they wanted to approve the variance  
31 request, they would also have to revise the Findings of Fact.  
32

33 Mr. Safrit asked the Chairman to read the Findings of Fact into the record and after reading the first  
34 finding, the Board asked for clarification on what was being asked of the Board. Ms. Coperine stated that  
35 staff is recommending denial of the variance request and that staff Findings support a denial. She  
36 reiterated that if the Board wanted to approve the variance request, they would have to revise the Findings  
37 of Fact by determining a hardship that was not caused by the applicant.  
38

39 There was additional discussion among the Board, staff and Mr. Safrit regarding the Findings of Fact.  
40

41 Mr. Safrit reminded the Board that:  
42

- 43 1. A finding should support whether the hardship resulted from conditions that are peculiar to the  
44 property. The applicant alleged that the hardship resulted from the property being located in the  
45 flood zone when in fact the whole neighborhood is located within the flood zone so that particular  
46 hardship is not peculiar to the property.  
47
- 48 2. Another finding should support that the hardship did not result from actions taken by the applicant  
49 or property owner. The applicant in this case admitted that it was his error that caused the  
50 foundation to be built within the front setback, therefore he created the hardship.  
51

1 Mr. Baker stated that he didn't think it was fair to the homeowner to deny the variance request since the  
2 error was created by the developer. Chairman Farmer reminded the Board that decisions should be based  
3 on facts of the case and not by feelings.  
4

5 There was additional discussion regarding location of the home with regards to the required 25-foot  
6 minimum setback.  
7

8 Chairman Farmer reminded the Board that a motion is needed to either approve or deny the variance request.  
9 Mr. Baker stated that he already made the motion, which was seconded by Mr. Palmer. Mr. Palmer stated  
10 that he would like to retract his motion based upon discussion and facts that were made clearer.  
11

12 Chairman Farmer asked for a motion to approve or deny the variance request. Mr. Baker made the motion  
13 to approve the variance request which failed due to lack of a second motion.  
14

15 Mr. Palmer made the motion to approve the Order of Denial which was seconded by Mr. Trott and the  
16 motion passed 5-1 with Mr. Baker casting the dissenting vote.  
17

18 **PLANNING DIRECTOR UPDATES**

19 Ms. Coperine stated that staff is expecting Clarion to provide an update on the UDO re-write in July or  
20 August and that the Board would be invited to that update.  
21

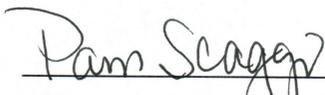
22 **ADJOURN**

23 There being no further business, Chairman Farmer asked for a motion to adjourn which was made by Mr.  
24 Palmer, seconded by Ms. Crosby and the motion was unanimously approved.  
25

26 The meeting was adjourned at 6:46 PM on Tuesday June 18, 2019.  
27  
28  
29

30   
Jonathan Farmer, Chairman  
Board of Adjustment

James Palmer  
Vice-Chairman

31   
32  
33  
34 Pam Scaggs, Recording Secretary  
35 Board of Adjustment