



**Board of Adjustment
May 21, 2019**

Staff Report

TO: Board of Adjustment
FROM: Gretchen Coperine, AICP – Senior Planner
SUBJECT: Case# BOA-2019-03: 842 Richard Avenue Variance

Request for variance from the provisions of Article 4, Table 4.7-1 of the Unified Development Ordinance (UDO) to allow a side setback of 4 feet on the subject lot in the Residential Village (RV) Zoning District.

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

B. Required Votes to Pass Requested Action

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

C. Background

The applicant, Marc Lista, is requesting a variance from Article 4, Table 4.7-1 of the Unified Development Ordinance, which requires minimum side setbacks of 7-feet in the Residential Village (RV) zoning district. Mr. Lista is requesting 4-foot setbacks and is proposing to build a single-family home. The width of the existing lot is approximately 25 feet at the location where the proposed single-family home would be situated. This limits the width of the home that may be built.

The proposed single-family home will be located at 842 Richard Avenue, further identified as Cabarrus County Parcel 5613-34-6387. Without the variance, the property owner would be restricted in the width of the home that may be built to a maximum of 11 feet wide. The variance will allow the home to be approximately 17 feet wide, which is approximately the width of a townhome. The lot has been in existence since 1935, and recombined to show the existing boundaries in 1948.

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 subject property has been in existence since 1935. The owner of the property is requesting the variance in order to build a single-family house on the property that has an appropriate width. Without the proposed variance, the City would be unable to approve a permit for a single-family home proposed for this lot as it would violate the minimum setback requirement for the RV zoning district.

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

The 25 foot lot width dimension for the subject property has not changed since 1948.

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

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

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.

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. Site Plan
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

KANNAPOLIS

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: Marc Lusta Owner: SAME

Address: 6129 Creekview cat Address: 1.
HARRISBURG NC 28071 Address: 1.

Telephone: 704-585-6571 Telephone: 1.

Email: MARCLusta@aol.com Email: 1.

Legal relationship of applicant to property owner: _____

Property Location/Address: 842 Richard Ave Kannapolis

Tax Parcel Number: 5613346387000 Zoning District: _____ Acreage of Site: _____

Marc Lusta _____
Applicant Name (Print) Property Owner Name (Print)

M/L 4/20/19 _____
Applicant Signature & Date 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 # KN-BOA-2019-00001

Application No.: BOA 2019 03

Date Submitted (Complete): 4/22/2019

May 21st mtg



CITY OF KANNAPOLIS PLANNING DEPARTMENT

APPLICATION FOR A VARIANCE

I, Marc Lister, 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): to move side setbacks to 4 foot
so I can build a narrow home

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:

Need to decrease set back to be able to
build house on parcel either a 2 bedroom or
3 Bedroom house

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.)

Need the setbacks to be reduced on side so
be able to fit a house 15 ft wide

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 way property is sited I cannot build
A house suitable for a family
TRYING to build an affordable house

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.)

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.)

This variance will help create a space to build
A affordable, beautiful addition to neighborhood

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

MARC LUSTA
Applicant Name (Print)
[Signature]
Applicant Signature

4/20/19
Date
4/20/19
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.

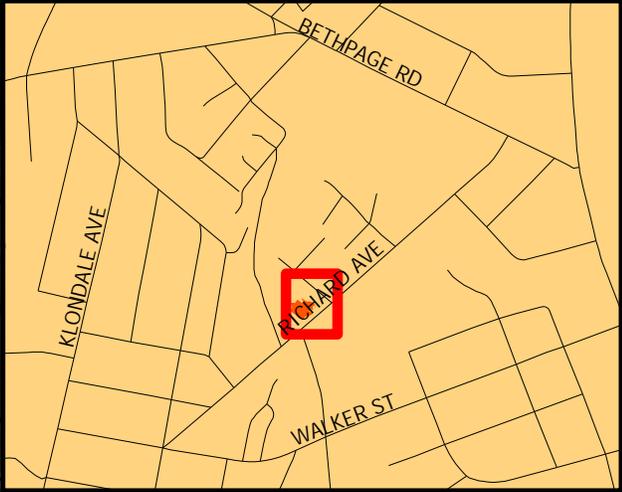
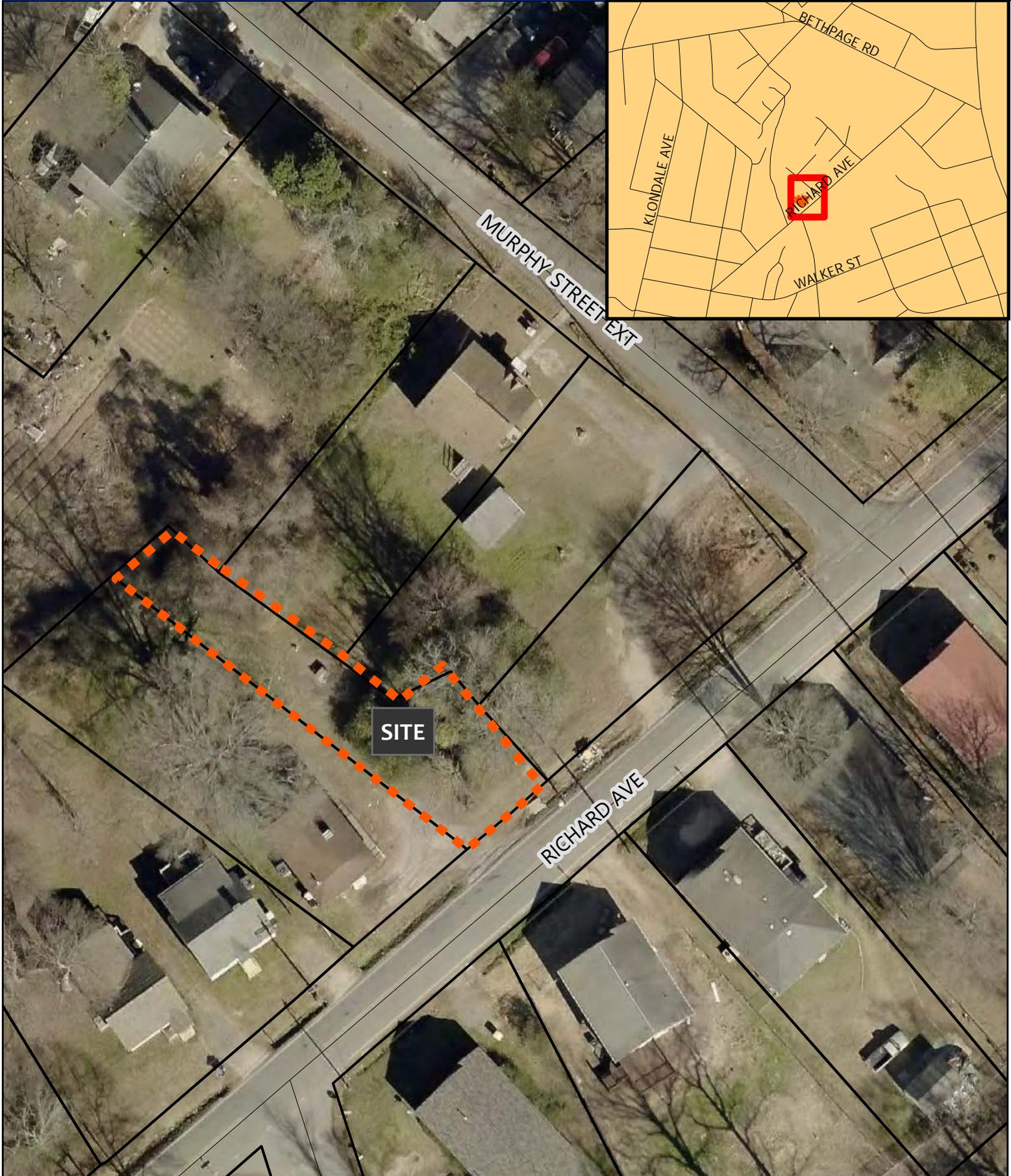


Vicinity Map

Case Number: BOA-2019-03

Applicant: Marc Lista

842 Richard Ave.

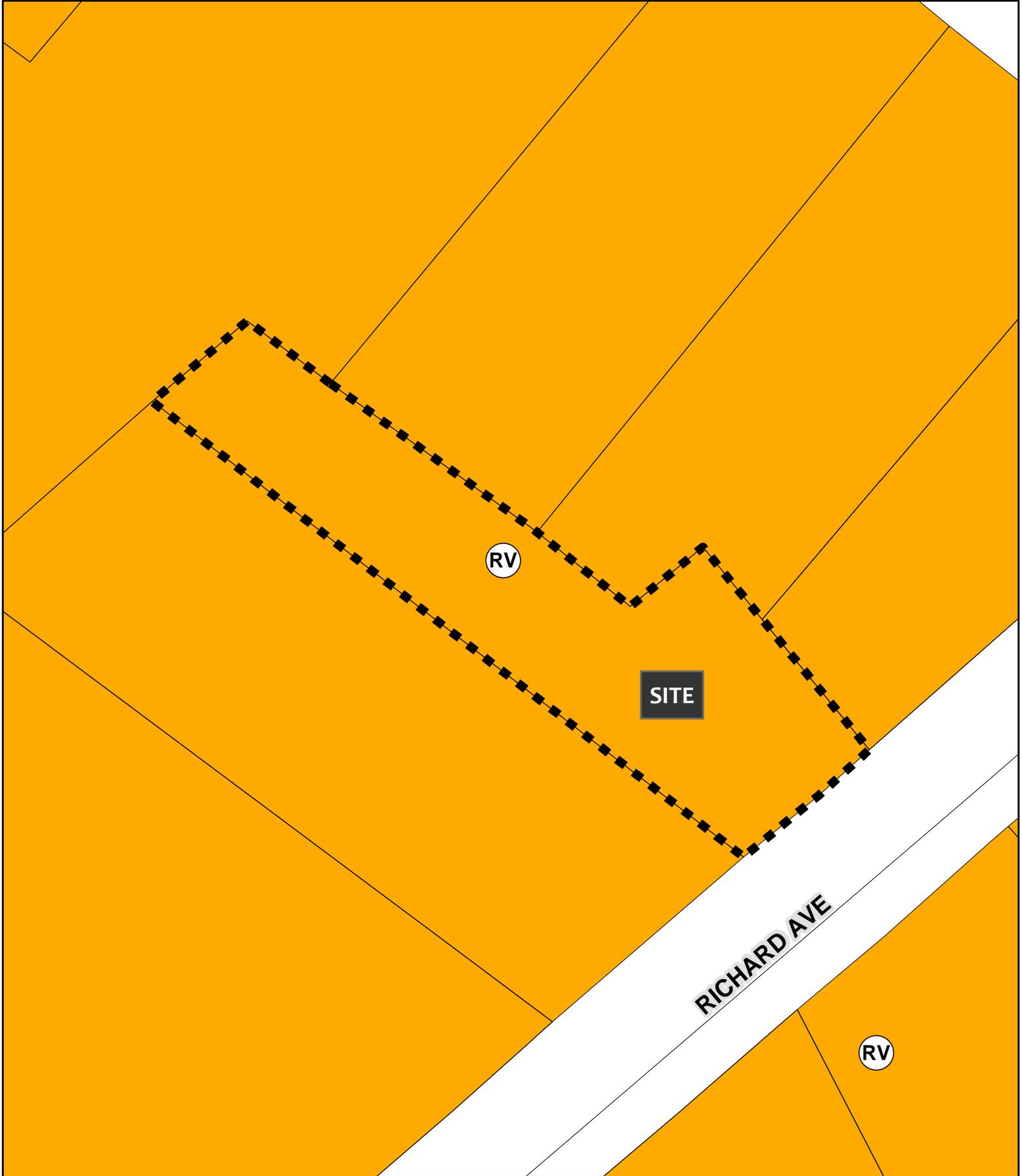




Kannapolis Current Zoning

Case Number: BOA-2019-03

Applicant: Marc Lista
842 Richard Ave.



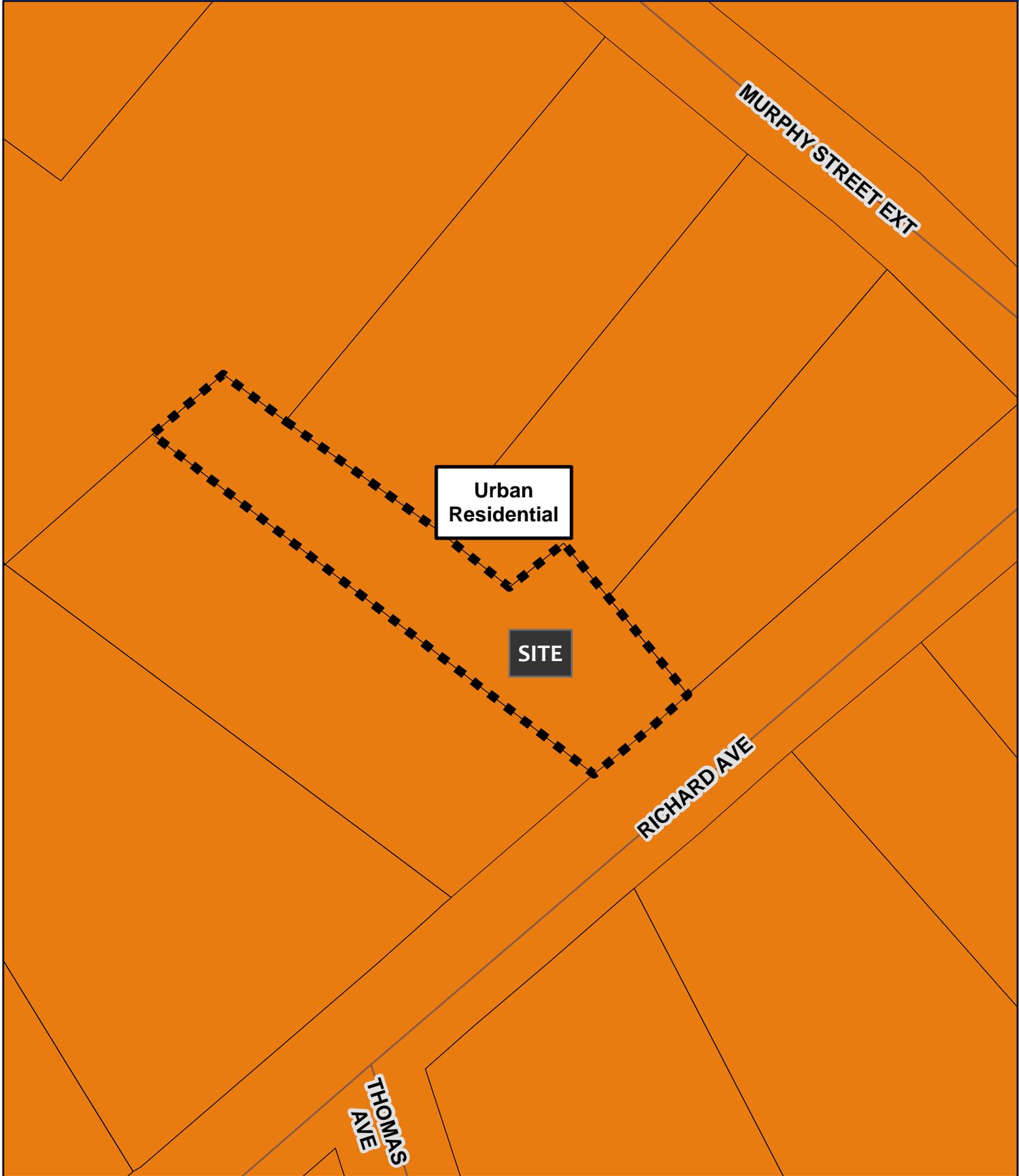


Kannapolis 2030 Future Land Use Map

Case Number: BOA-2019-03

Applicant: Marc Lista

842 Richard Ave.

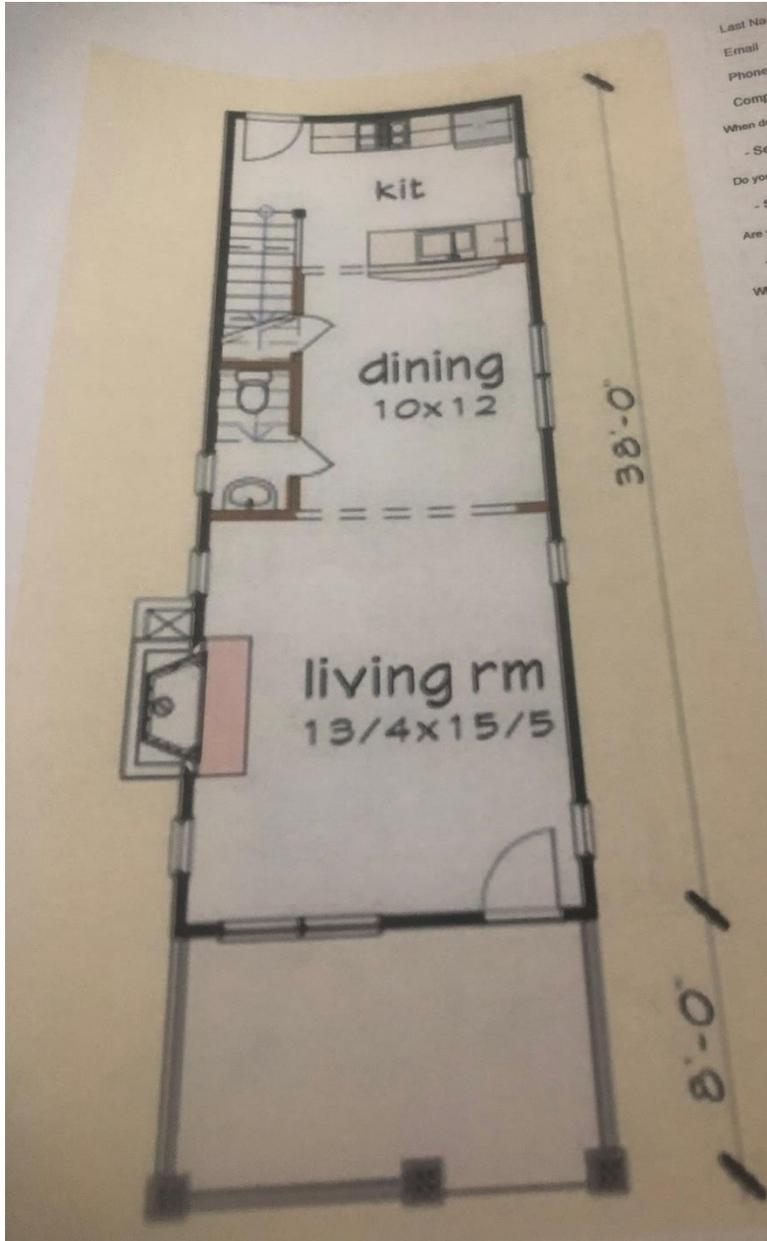


House Options: Both Requiring Side Setback Variance



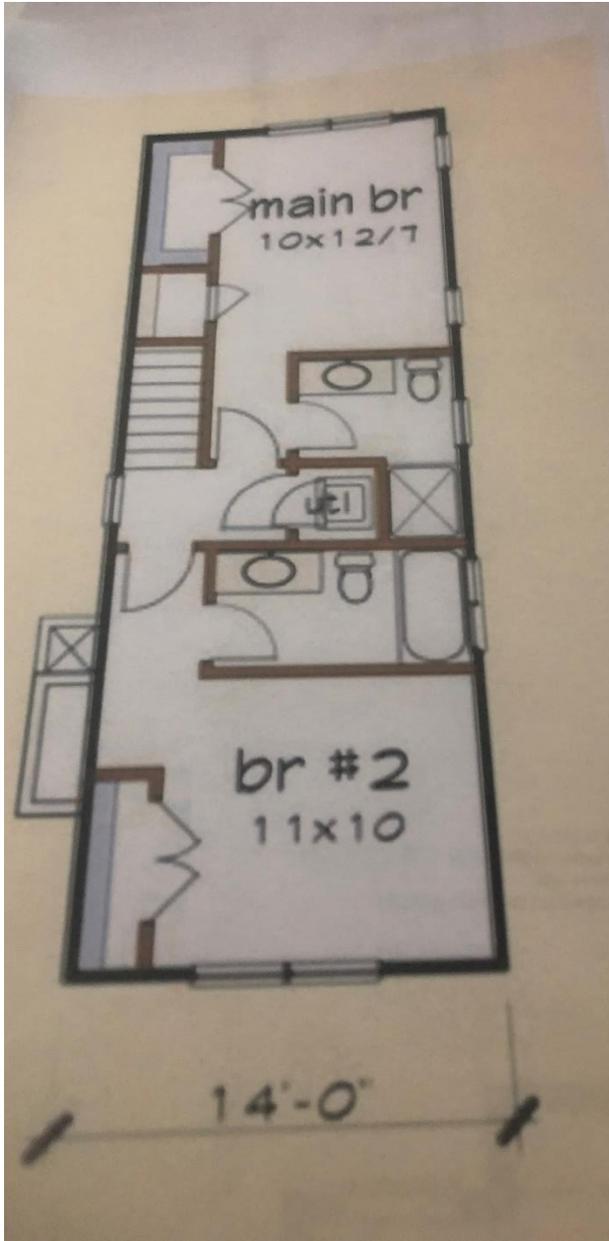
Concept 1: 14 feet wide by 38 feet deep, with side loaded garage

House Options: Both Requiring Side Setback Variance



Concept 1: 14 feet wide by 38 feet deep, with side loaded garage

House Options: Both Requiring Side Setback Variance



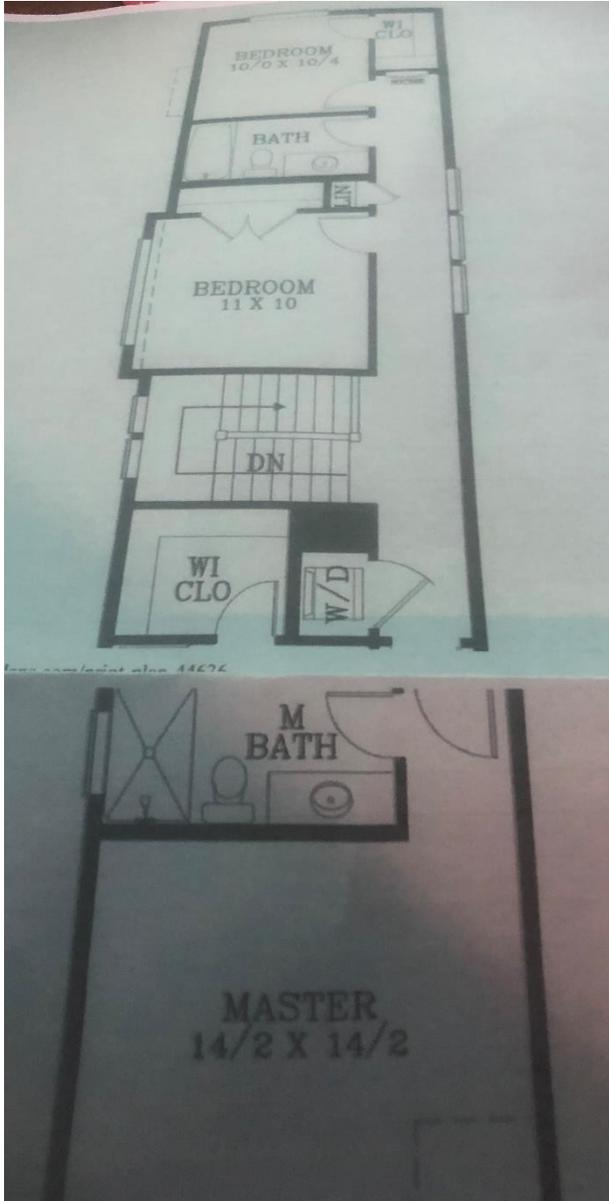
Concept 1: 14 feet wide by 38 feet deep, with side loaded garage

House Options: Both Requiring Side Setback Variance



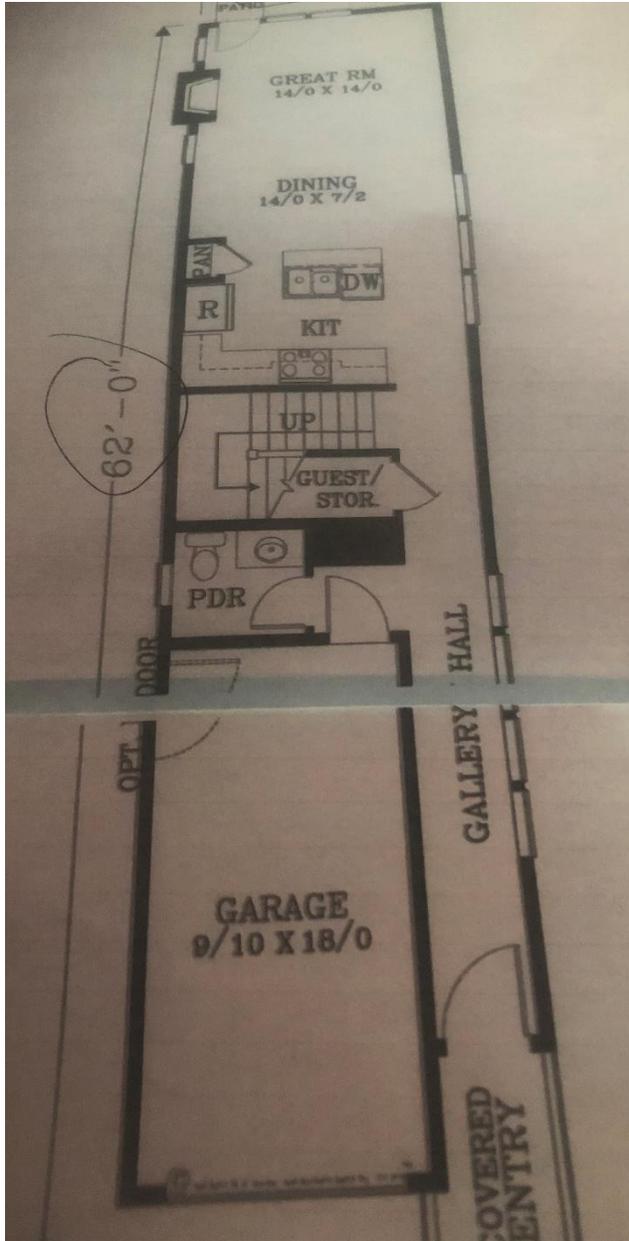
Concept 2: 15 feet wide by 62 feet deep, with front loaded garage

House Options: Both Requiring Side Setback Variance



Concept 2: 15 feet wide by 62 feet deep, with front loaded garage

House Options: Both Requiring Side Setback Variance



Concept 2: 15 feet wide by 62 feet deep, with front loaded garage

AcctName1	MaiAddr1	MailCity	MailState	MailZipCod
BRANDON JUHAISH	1412 BIRCH ST	KANNAPOLIS	NC	28081
CARDINAL REAL EST HOLDINGS LLC	23 UNION ST N	CONCORD	NC	28025
GINGER G CAMPBELL	510 MURPHY ST	KANNAPOLIS	NC	28081
STEPHAN KIRSCH	847 RICHARD AVE	KANNAPOLIS	NC	28081
JAVIER PERUCHO	508 MURPHY STREET	KANNAPOLIS	NC	28081
JUAN CONTRERAS	118 BARLEY RUN	SALISBURY	NC	28147
STANSFIELD AND GALARDE LLC	234 SEACREST DR	WRITSVLLE BCH	NC	28480
PERRY & PERRY PROPERTIES LLC	2015 W C ST	KANNAPOLIS	NC	28081
CARLOS E GONZALEZ DOMINGUEZ	839 RICHARD AVE	KANNAPOLIS	NC	28081
STONE PROPERTIES AND DEVELOPMNT	112A ARGUS LN # 464	MOORESVILLE	NC	28117
CABARRUS COOPERATIVE CHRISTIAN MINISTRY INC NC NON PROF CORP	731 ARCHDALE DRIVE PO BOX 1717	CONCORD	NC	28026
DONELL C AIKENS	841 RICHARD AVE	KANNAPOLIS	NC	28081
PERRY & PERRY PROPERTIES LLC	2015 W C ST	KANNAPOLIS	NC	28081
CONNIE ZAHLER	836 RICHARD AVE	KANNAPOLIS	NC	28081
FRANCISCO & JUANA VARELA	3124 BARR RD	CONCORD	NC	28027
JOSE & TERESA PEDROZA	1000 THOMAS AVE	KANNAPOLIS	NC	28081
MARC LISTA	6129 CREEKVIEW CT	HARRISBURG	NC	28075
WADE & BRITTANY FOLEY	3250 PENNY EARLEY LN	KANNAPOLIS	NC	28083
GINGER G CAMPBELL AND DEBRA DAVIDSON	510 MURPHY ST	KANNAPOLIS	NC	28081
SHIFA 1 LLC	158 LECLINE DR NE	CONCORD	NC	28025
AVEET LLC	11215 ARLEN PARK DR	HUNTERSVILLE	NC	28078
SHARON M SPENDER & WESLEY GAY	843 RICHARD AVE	KANNAPOLIS	NC	28081
MARK ROYSTER	845 RICHARD AVE	KANNAPOLIS	NC	28081
ROGELIO ESTRADA ANACLETO	1029 GLOCK COURT	SALISBURY	NC	28144



April 29, 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, May 21, 2019 at City Hall, located at 401 Laureate Way, for the following case:

BOA-2019-03 - Variance – 842 Richard Avenue

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 side yard setbacks of 7-feet for property located in the Residential Village (RV) zoning district. The request is to allow a 4-foot side setback. The subject property is approximately .10 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Number 5613-34-6387. **(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,

Gretchen Coperine, AICP
Senior Planner

Enclosure

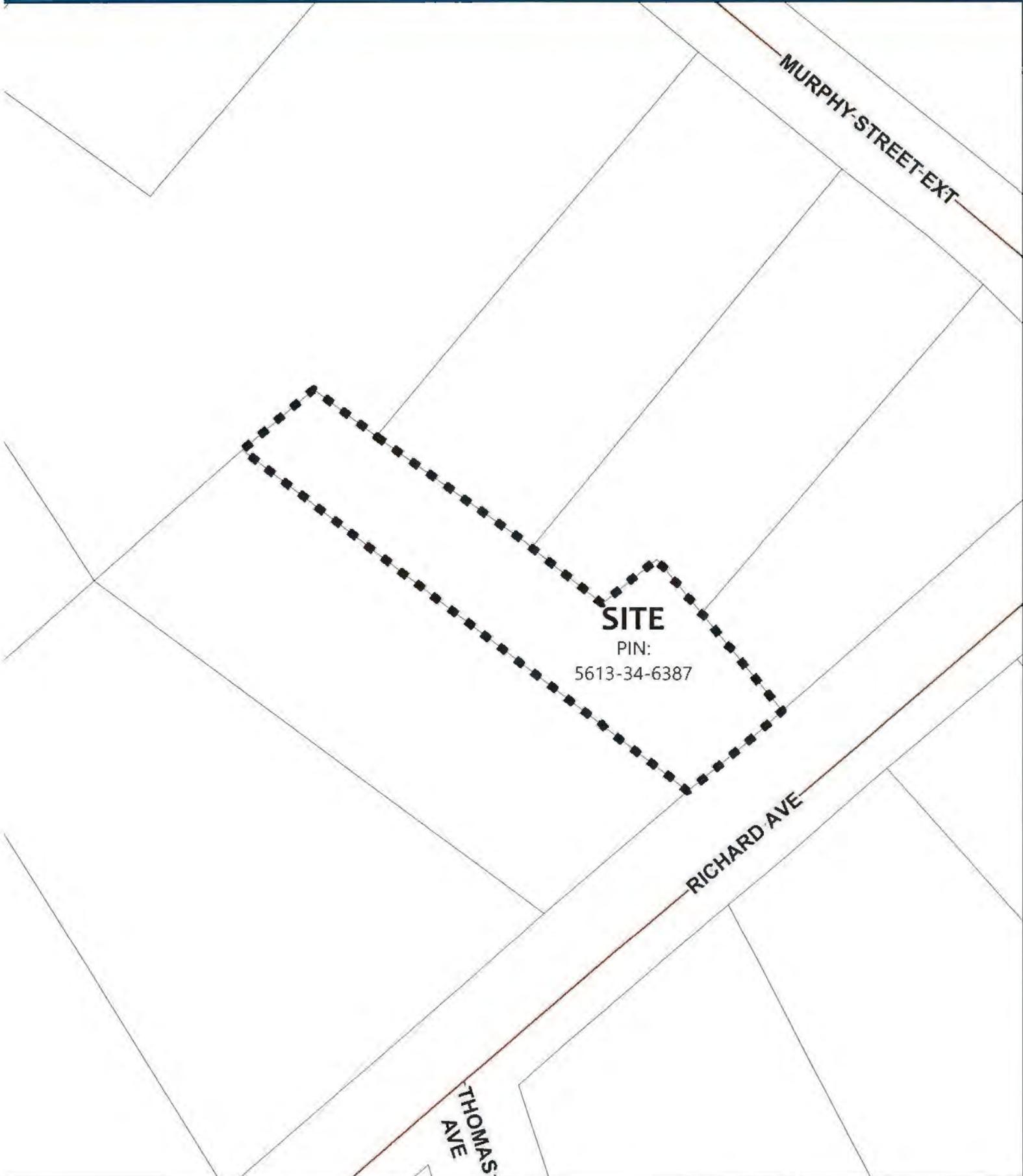
The meeting is accessible to people with disabilities. To request special accommodation in advance, contact the City's ADA Coordinator at 704.920.4302.



Variance- Richard Ave.

Case Number: BOA-2019-03

Applicant: Marc Lista
842 Richard Ave.



KANNAPOLIS
BOARD OF
ADJUSTMENT
PUBLIC HEARING
INFORMATION
CALL 704-920-4350
CASE # ~~19-03~~ 19_03