



**Board of Adjustment  
June 18, 2019**

**Staff Report**

**TO:** Board of Adjustment  
**FROM:** Ryan Lipp – Senior Planner  
**SUBJECT:** Case# BOA-2019-06: 2089 Hambridge Avenue

**Request for variance from the provisions of Article 4, Table 4.7-1 of the Unified Development Ordinance (UDO) to allow a front setback of 15.6-feet on the subject property in the Residential Medium Density (RM-1) 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 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, Blue Oak Construction, is requesting a variance from Article 4, Table 4.7-1 of the Unified Development Ordinance, which requires a minimum front setback of 25-feet in the Residential Medium Density (RM-1) zoning district. The applicant is requesting a front setback of 15.6-feet.

The applicant was given a permit to construct a single-family house. Construction began on the foundation of the house. A survey performed after the foundation was poured showed that the foundation footprint encroached into the front setback. Construction has since been put on hold. The applicant is requesting the variance to allow for continuation of the project.

**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 is located within the RM-1 Residential Medium Density District which allows for single-family dwellings. The applicant submitted a zoning clearance application that was shown to be in compliance with the City of Kannapolis UDO. A Zoning Clearance Permit was issued based on the setbacks noted in the zoning clearance application.

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

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

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

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

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

**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.**

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**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 **denial** 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 Site Plan
6. Foundation Survey
7. List of Notified Properties
8. Notice to Adjacent Property Owners
9. 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: Blue Oak Construction Owner: Barry & Natasha Lipscomb  
 (Jeff Efind Jr & Sr)  
 Address: 1923 Normandy Rd Address: 2089 Hambridge Ave  
Kannapolis, NC 28081 Kannapolis, NC 28081  
 Telephone: 704-267-4215 Telephone: 704-224-6343  
 Email: jeffefindjr@blueoakdesignbuild.com Email: barry.lipscomb23@yahoo.com

Legal relationship of applicant to property owner: Builder

Property Location/Address: 2089 Hambridge Ave, Kannapolis, NC 28081

Tax Parcel Number: 56029437380000 Zoning District: RM-1 Acreage of Site: .516

Jeff Efind Jr  
 Applicant Name (Print)

Barry Lipscomb  
 Property Owner Name (Print)

[Signature] 5-18-19  
 Applicant Signature & Date

[Signature] 5-18-2019  
 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-11167

Application No.: BOA-2019-06  
2089 Hambridge

Date Submitted (Complete): 5/21/2019



## CITY OF KANNAPOLIS PLANNING DEPARTMENT

### APPLICATION FOR A VARIANCE

I, Jeffery Lynn Esird, 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): Principals Front set Back

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:

See attached sketch plan

### 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.)

We are trying to keep the home out of the flood zone in the back where the property drops off and becomes swampy. Also being a narrow lot and culdesac we had to follow the contour of the culdesac while staying between the side set backs of the lot.

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.)

Without this variance the lot would be difficult to build on or unusable due to the flood zone and swampy area behind the home. This will be the only home in the culdesac due to flooding zones to the left of home and the land to the left of home being owned by Cabarrus county. This variance will allow us to build on dry solid ground out of flood zone while also staying within side setbacks

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.)

We originally laid the home off by pulling back 25ft from the left and right setbacks and pulling a straight line across to find our setback distance from the property line, not taking into affect that the line follows the curve of the culdesac. The home currently has footing, foundation, + framing this was caught while getting a re-survey. If caught before hand a variance would still be needed

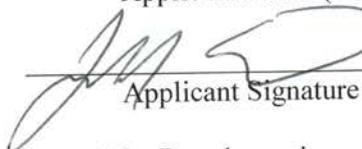
4. **The requested Variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.** (State facts and arguments to show that, on balance, if the Variance is denied, the benefit to the public will be substantially outweighed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

The intent is to build a single family dwelling out of the flood zone and out of swampy / poor soil area. This will allow the home to have a solid and dry foundation and crawlspace.

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

Jeffery Lynn Eford  
Applicant Name (Print)

5-18-19  
Date

  
Applicant Signature

5-18-19  
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

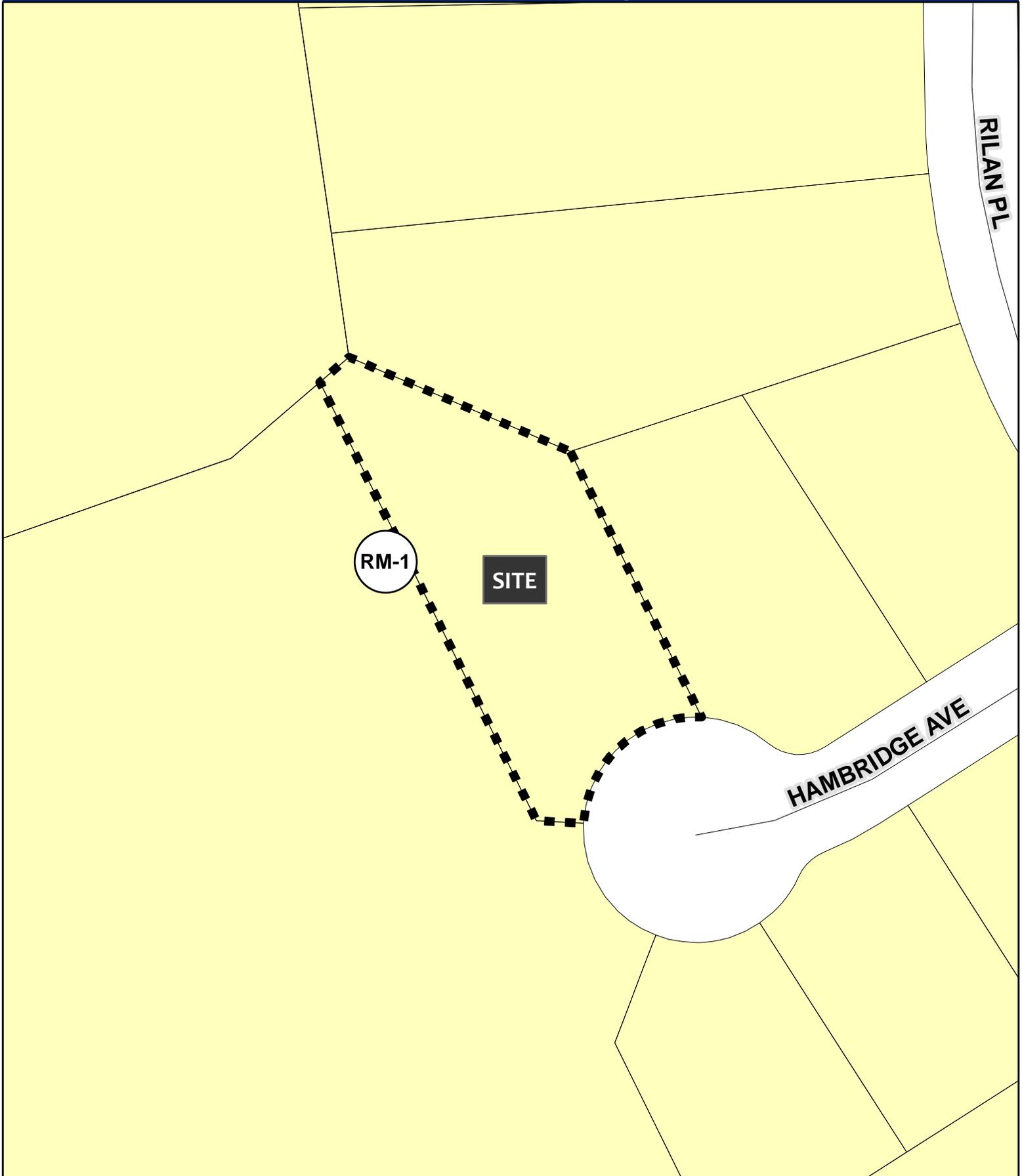
Case Number: BOA-2019-06  
Blue Oak Construction  
2089 Hambridge Ave.





# Kannapolis Current Zoning

Case Number: BOA-2019-06  
Blue Oak Construction  
2089 Hambridge Ave.



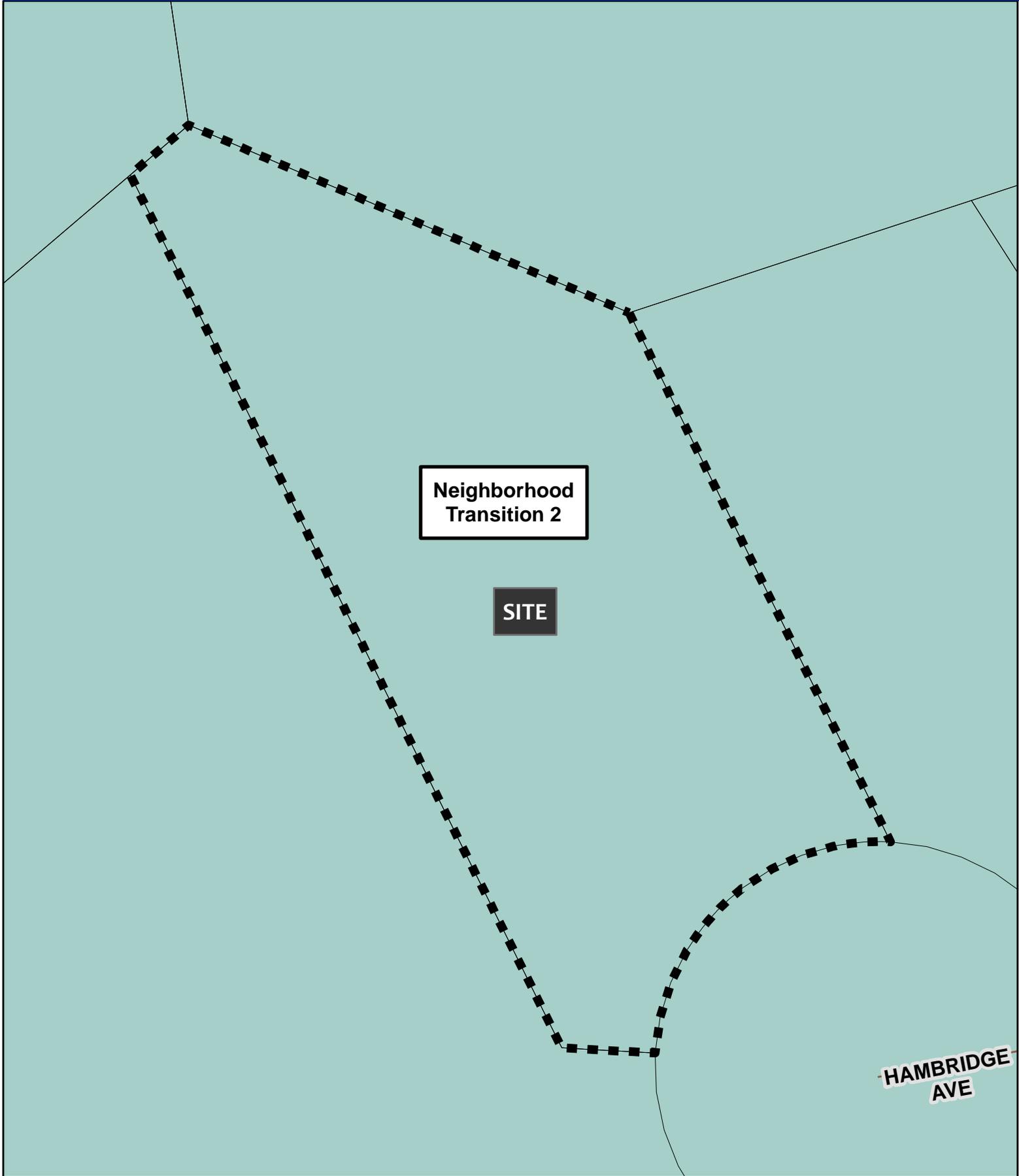


# Kannapolis 2030 Future Land Use Map

Case Number: BOA-2019-06

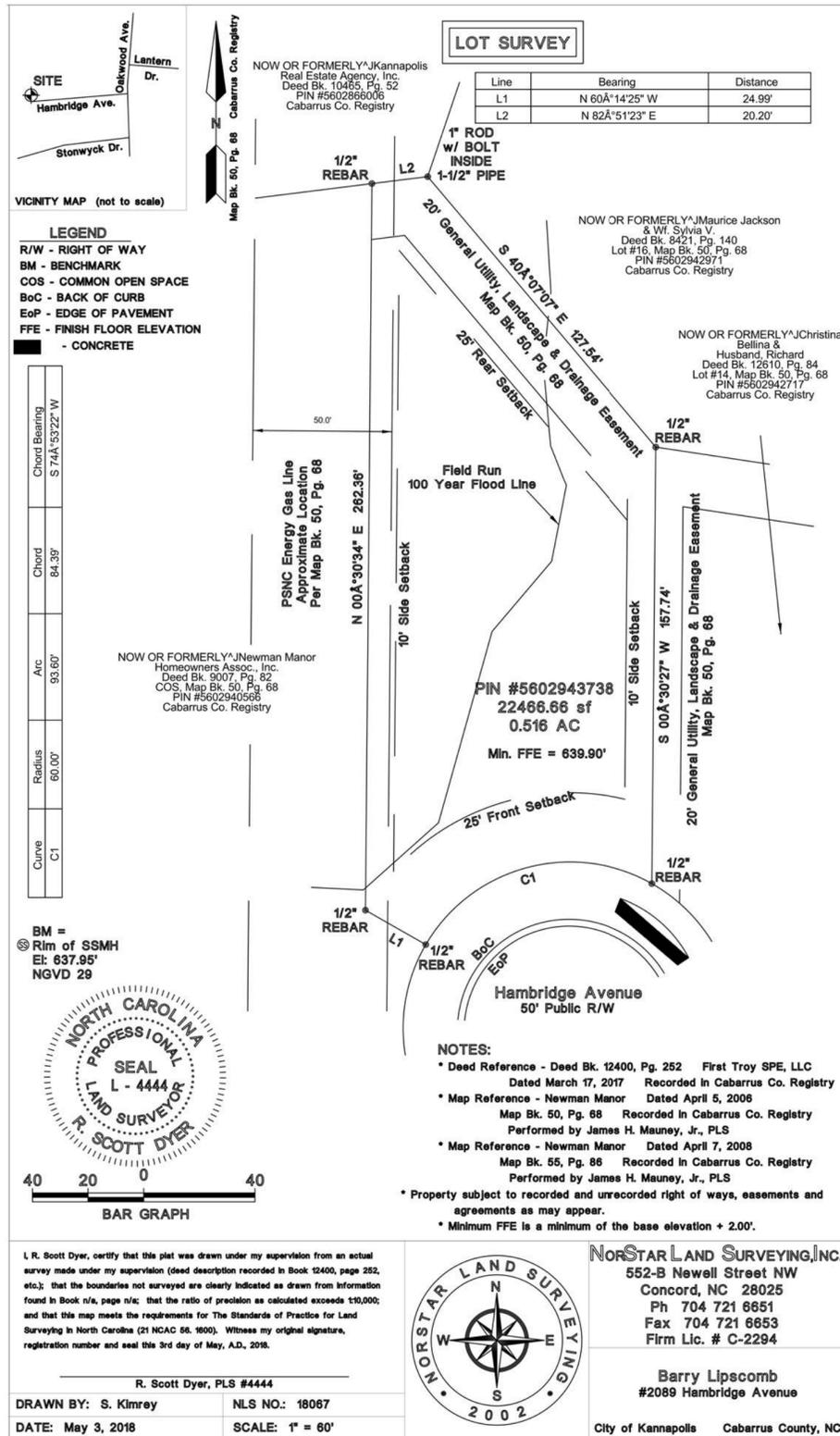
Blue Oak Construction

2089 Hambridge Ave.



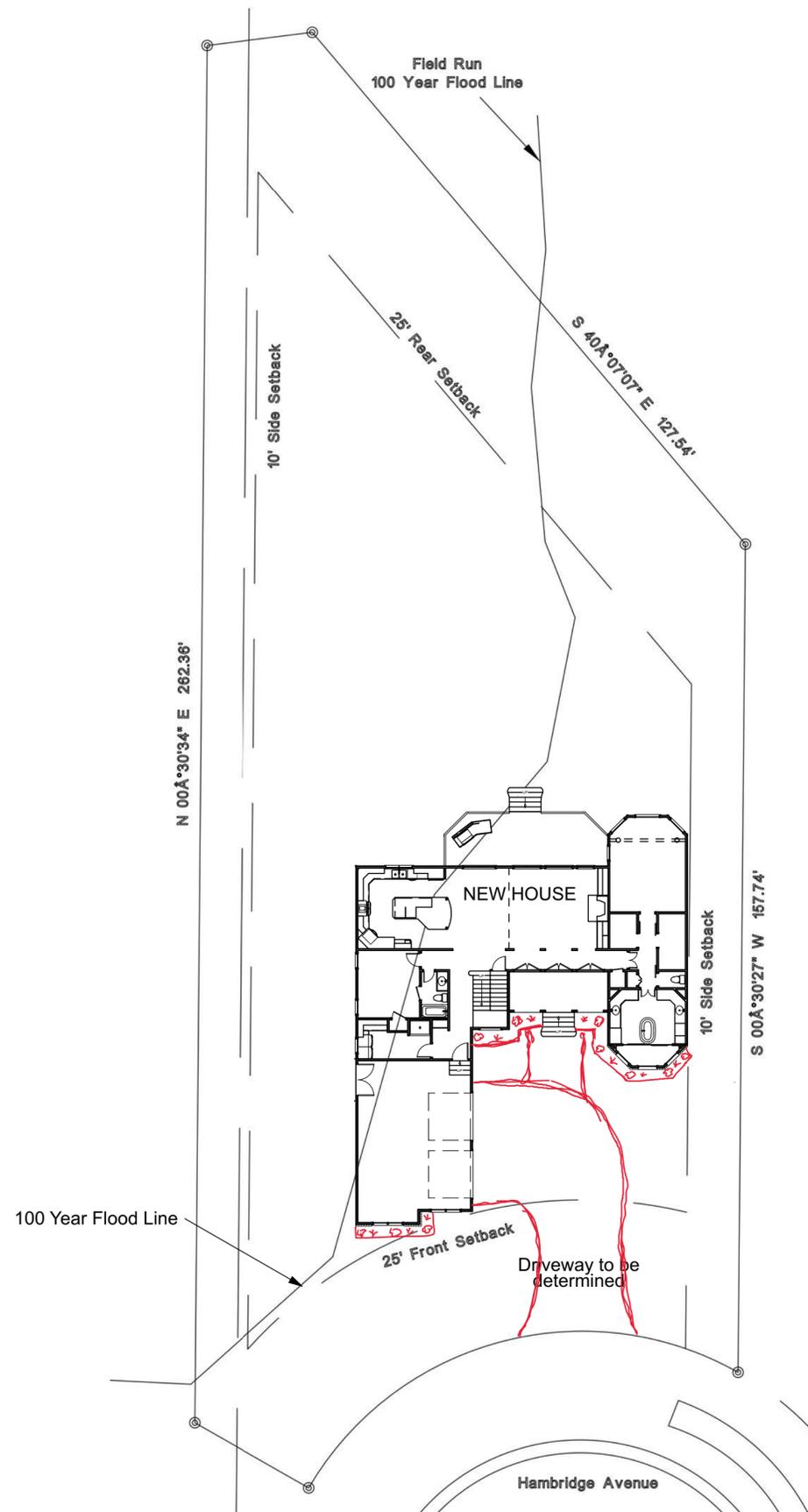
# Surveyed Site Plan

SCALE: 1" = 40'-0"



# Proposed Site Plan

SCALE: 1" = 20'-0"



JOB #  
590

## Site Plan

Note to the Contractor  
 These drawings have been prepared to show the layout and style of the job the owners wish to construct. It is the responsibility of the builder to see that this project meets all current building codes, including structural work, that apply in this area.

A New Residence for  
 Barry & Natasha Lipscomb  
 2099 Hambridge Ave, Kannapolis, NC

Efidr Construction  
 833 Maple Ridge Cir  
 Salisbury, North Carolina 28147  
 Phone 704) 855-3634

DATE:  
7/16/18

SCALE:  
As Noted

SHEET:  
1 of 6

**FOUNDATION SURVEY**

Line	Bearing	Distance
L1	N 60°14'25" W	24.99'
L2	N 82°51'23" E	20.20'



- LEGEND**
- R/W - RIGHT OF WAY
  - BM - BENCHMARK
  - COS - COMMON OPEN SPACE
  - BoC - BACK OF CURB
  - EdP - EDGE OF PAVEMENT
  - FFE - FINISH FLOOR ELEVATION
  - CONCRETE

Chord Bearing	S 74°53'22" W
Chord	84.39'
Arc	93.80'
Radius	60.00'
Curve	C1

BM =  
 ⊙ Rim of SSMH  
 El: 637.64'  
 NGVD 88



NOW OR FORMERLY  
 Kannapolis Real Estate Agency, Inc.  
 Deed Bk. 10465, Pg. 52  
 PIN #5602886006  
 Cabarrus Co. Registry

NOW OR FORMERLY  
 Maurice Jackson & Wf. Sylvia V.  
 Deed Bk. 8421, Pg. 140  
 Lot #16, Map Bk. 50, Pg. 68  
 PIN #5602942971  
 Cabarrus Co. Registry

NOW OR FORMERLY  
 Christina Bellina &  
 Husband, Richard  
 Deed Bk. 12610, Pg. 84  
 Lot #14, Map Bk. 50, Pg. 68  
 PIN #5602942717

NOW OR FORMERLY  
 Newman Manor Homeowners Assoc., Inc.  
 Deed Bk. 9007, Pg. 82  
 COS, Map Bk. 50, Pg. 68  
 PIN #5602940566  
 Cabarrus Co. Registry

**Lot #13**  
 PIN #5602943738  
 22466.66 sf  
 0.516 AC  
 Min. FFE = 639.90'  
 Map Bk. 50, Pg. 68  
 Based on Sanitary



- NOTES:**
- \* Deed Reference - Deed Bk. 13049, Pg. 11 Barry L. Lipscomb & wf. Natasha P. Dated June 19, 2018 Recorded in Cabarrus Co. Registry
  - \* Map Reference - Newman Manor Dated April 7, 2008 Map Bk. 55, Pg. 86 Recorded in Cabarrus Co. Registry Performed by James H. Mauney, Jr. PLS
  - \* A portion of the subject property does lie within Flood Hazard Zone AE per FEMA Map #3710560200K with a revised effective date of November 16, 2018
  - \* Property subject to recorded and unrecorded right of ways, easements and agreements as may appear
  - \* Minimum FFE is a minimum of the base elevation + 2.00'

I, R. Scott Dyer, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book 13049, page 11 etc.), that the boundaries not surveyed are clearly indicated as drawn from information found in Book n/a, page n/a, that the ratio of precision as calculated exceeds 1:10,000; and that this map meets the requirements for The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56.1900). Witness my original signature, registration number and seal this 6th day of May, A.D., 2019.

*R. Scott Dyer*  
 R. Scott Dyer, PLS #4444

DRAWN BY: S. Dyer NLS NO.: 18067  
 DATE: May 5, 2019 SCALE: 1" = 40'



**NORSTAR LAND SURVEYING, INC.**  
 552-B Newell Street NW  
 Concord, NC 28025  
 Ph 704 721 6651  
 Fax 704 721 6653  
 Firm Lic. # C-2294

Barry & Natasha Lipscomb  
 #2089 Hambridge Avenue  
 City of Kannapolis Cabarrus County, NC

AcctName1	Addr	City	State	ZipCod
BRETT & JOAN BASINGER	1524 RILAND PL	KANNAPOLIS	NC	28083
MARUICE & SYLVIA JACKSON	3316 WRANGLER LN	CHARLOTTE	NC	28213
MICHAEL JORDAN	P O BOX 1167	KANNAPOLIS	NC	28082
NEWMAN MANOR HOMEOWNERS ASSC	PO BOX 1106	KANNAPOLIS	NC	28082
JERRY MCMURRAY	1516 RILAN LANE	KANNAPOLIS	NC	28081
RICHARD & CHRISTINA BELLINA	2081 HAMBRIDGE AVE	KANNAPOLIS	NC	28081
KANNAPOLIS REAL EST AGENCY INC	500 S CANNON BLVD	KANNAPOLIS	NC	28083
RORY W CONNELLAN	2073 HAMBRIDGE AVE	KANNAPOLIS	NC	28081
BARRY & NATASHA LIPSCOMB	13211 S GEMINI SPRINGS DR	KANNAPOLIS	NC	28081
J&E LAND HOLDING COMPANY LLC	P O BOX 400	DAVIDSON	NC	28036
BLUE OAK CONSTRUCTION ATTN: JEFF EFIRD	1923 NORMANDY RD	KANNAPOLIS	NC	28081



May 28, 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, June 18, 2019 at City Hall, located at 401 Laureate Way, for the following case:**

**BOA-2019-06 - Variance – 2089 Hambridge 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 front setbacks of 25-feet for property located in the Residential Medium Density (RM-1) zoning district. The request is to allow a 15.6-foot front setback. The subject property is approximately .52 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Number 5602-94-3738. **(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.





KANNAPLIS  
**BOARD OF**  
**ADJUSTMENT**  
PUBLIC HEARING  
INFORMATION  
CALL 704-920-4350  
CASE # 19.06.

