CITY OF KANNAPOLIS, NC
BOARD OF ADJUSTMENT

Minutes of Meeting
Tuesday October 15, 2019

The Board of Adjustment met on Tuesday October 15, 2019 at 6:00 PM at City Hall, 401 Laureate Way, Kannapolis, North Carolina.

Board Members Present:	Jonathan Farmer, Chairman Boyd Hardin Colby Meadows Jeff Parker Joann Crosby Ryan French Scott Trott
Board Members Absent:	James Palmer, Vice-Chairman Andrew Baker
Staff Present:	Ryan Lipp, Senior Planner David Jordon, IT
Visitors Present:	Brandy Sellers William Harvey Argusta Watson Jr. Chadwick Harvey

CALL TO ORDER
Chairman Farmer called the meeting to order at 6:00pm.

ROLL CALL AND RECOGNITION OF QUORUM
Recording Secretary Pam Scaggs, called the roll and presence of a quorum was recognized.

APPROVAL OF AGENDA
Chairman Farmer asked for a motion to accept the Agenda which was made by Mr. Meadows, seconded by Ms. Crosby and the motion was unanimously approved.

APPROVAL /CORRECTION OF MINUTES
Chairman Farmer asked for a motion to approve the July 16, 2019 meeting minutes which was made by Mr. French, seconded by Mr. Meadows and the motion was unanimously approved.

SWORN IN FOR TESTIMONY
Ryan Lipp, Brandy Sellers, and Argusta Watson Jr.

PUBLIC HEARING

BOA-2019-09 – Variance – 1107 E 13th Street Variance
Senior Planner Ryan Lipp gave a PowerPoint presentation regarding a request for a variance and provided the application details for case BOA-2019-09 (Exhibit 1). He noted the applicant, property owner, Parcel

Identification Number, and dates that public notice was provided. Mr. Lipp stated that the applicant is requesting a variance from Table 4.7-1 regarding minimum side setback requirements within the Residential Medium Density (RM-2) zoning district.

Mr. Lipp directed the Board's attention to the Vicinity, Zoning, and Future Land Use maps as well as street view photos of the property further detailing the location, zoning and future land use per the *2030 Plan*. He stated that the applicant is requesting variances from the side setbacks in order to subdivide the subject property into three (3) parcels. Mr. Lipp further explained that there has been a home on the property since 1947 which is currently in non-conformance with the Unified Development Ordinance (UDO) and the subject of the variance request. He directed the Board's attention to the preliminary site plan detailing the proposed subdivision.

Mr. Lipp reviewed the Policy Issues and staff findings:

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

2. **The hardship results from conditions that are peculiar to the property, such as location, size, or topography.**
   Staff Assessment
   The location of the house has not changed since its construction in 1947.

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

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 and will preserve its spirit.**
   Staff Assessment
   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.

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

Mr. Trott asked why there is a setback issue if the home has existed since 1947? Mr. Lipp responded that changes to zoning over the years has created many nonconforming properties which are considered "grandfathered" but since Ms. Sellers wants to subdivide the property, the issue of the setback needs to be addressed.

Mr. French asked the distance between the house located on the subject property and the house located on the adjacent property? Mr. Lipp indicated that he does not know but that the applicant may be able to respond.

Mr. Safrit referenced the submitted site plan and asked if Lot #3 is large enough to accommodate a single-family home? Mr. Lipp responded that it meets the minimum lot requirements for a parcel in the RM-2 zoning district. There was further discussion between Mr. Safrit and Mr. Lipp regarding the site plan.

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

Argusta Watson Jr., 1105 E. 13th Street, asked if his property will be impacted by the proposed subdivision? Mr. Lipp responded that adjacent properties will not be affected by the requested variance since the home has existed on the property since 1947 and approval of the variance will only bring the subject property into conformance with the Unified Development Ordinance (UDO).

Brandy Sellers, 3390 Keady Mill Loop, responded to questions from Mr. Safrit regarding the size of the proposed homes. She provided a site plan and a rendering of the proposed homes. Mr. Safrit asked if a home will fit onto Lot #3? Ms. Sellers responded that the home proposed for Lot #3 will be a 40'X 52', rectangular home and will fit within the RM-2 setback requirements. Mr. Safrit asked if a contractor will be building the home? Ms. Sellers responded "yes".

Mr. Trott asked if any the trees will be removed? Ms. Sellers responded that they are trying to save as many trees as possible.

Mr. Farmer asked if any of the proposed homes will able to accommodate addition of a deck or patio? Mr. Lipp responded that any addition to the homes would not be permitted due to setback requirements for primary structures but that an accessory structure would be permitted since there is only a minimum 5 foot setback requirement for accessory structures such as a storage shed or garage.

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

Chairman Farmer asked for a motion to accept the City's and Ms. Sellers exhibits into the record which was made by Mr. French, seconded by Mr. Parker and the motion was unanimously approved.

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

Chairman Farmer asked for a motion to approve or deny the variance request. Mr. Meadows made a motion to approve the variance and the Order of Approval, which was seconded by Ms. Crosby and the motion was unanimously approved.

Mr. Safrit advised that a motion to approve the Order should also be made. Mr. French made the motion to approve the Order as written which was seconded by Mr. Meadows and the motion was unanimously approved.

OTHER BUSINESS

Chairman Farmer asked for motion to elect Chairman and Vice-Chairman for the 2020 fiscal year. Mr. Parker made a motion to make no changes to the Board which was seconded by Ms. Crosby and the motion was unanimously approved.

Chairman Farmer asked for motion to approve the 2020 Board of Adjustment Schedule which was made by Mr. French, seconded by Mr. Trott, and the motion was unanimously approved.

ADJOURN

There being no further business, Chairman Farmer asked for a motion to adjourn which was made by Mr. French, seconded by Mr. Meadows and the motion was unanimously approved.

The meeting was adjourned at 6:22 PM on Tuesday October 15, 2019.

Jonathan Farmer, Chairman
Board of Adjustment

Pam Scaggs, Recording Secretary
Board of Adjustment

EXHIBIT 1 - BOA
OCTOBER 15, 2019 MINUTES

KANNAPOLIS
Planning

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	
X		**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.
X		**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.
X		**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.
X		**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