



**Board of Adjustment
March 17, 2020**

Staff Report

TO: Board of Adjustment

FROM: Ryan Lipp, AICP – Senior Planner

SUBJECT: Case# BOA-2020-08: Variance – Unaddressed parcel on Buick Avenue, Cabarrus County Pin # 56136578200000

Request for variance from the provisions of Article 4, Table 4.7-1 of the Unified Development Ordinance (UDO) for a reduction of the front setback to allow construction of a single-family detached residential structure 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
4. Motion to issue 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, Marie Dellinger, is requesting a variance from Article 4, Table 4.7-1 of the Unified Development Ordinance, which requires a minimum front setback of 20 feet for property located within the Residential Village (RV) zoning district, in order to construct a single-family detached residential structure. A large portion of the property is within a stream buffer, limiting the buildable area for a single-family residential structure. The intent of the variance is to allow a larger setback along one of the frontages to enlarge the buildable area, thus allowing a single-family home to be constructed.

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.

Article 4.15 of the Unified Development Ordinance establishes minimum buffers for rivers and streams within the City of Kannapolis. The stream located on the subject property requires a 60' buffer on either side of the bank where no land disturbance is allowed. Without the variance the buildable area on the lot is insufficient to allow for the construction of a single-family detached structure.

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

The property is a corner lot, which requires a 20-foot setback from the public right of way on two sides of the property. The location of the stream runs parallel to the interior lot line. The buffer required for this stream combined with the required setbacks leaves only a small portion of the lot at the corner intersection of Pineview St. and Buick Ave available to build a home. Without the variance the applicant would be unable to build a home at this location.

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

No actions were taken by the applicant or the property owner that affected the topography of the land, nor were any actions taken to create the hardship resulting from the application of the 20-foot front setbacks.

 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 intent of section 4.15 is the preservation of natural vegetation along streams and rivers within the City of Kannapolis. The general purpose of Article 4 is to implement the comprehensive plan and to provide for the orderly growth and development of the City, while also promoting the general welfare of all stakeholders. The approval of this variance would allow for the use of this property as intended by the comprehensive plan, while still maintaining the buffer required by section 4.15.

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

\$325⁰⁰



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: Marie Dellinger Owner: Marie Dellinger, Manager Sol Marie Properties, LLC

Address: 1005 Dakota Street Kannapolis, NC 28083 Address: 1005 Dakota Street Kannapolis, NC 28083

Telephone: 321-276-9979 Telephone: 321-276-9979

Email: MarieMess48@gmail.com Email: MarieMess48@gmail.com

Legal relationship of applicant to property owner: self

Property Location/Address: Buick Avenue

Tax Parcel Number: 5613 65 7820 000 Zoning District: RV Acreage of Site: _____

Marie Dellinger Applicant Name (Print) Marie Dellinger Property Owner Name (Print)

Marie Dellinger 2/17/2020 Applicant Signature & Date Marie Dellinger 2/17/2020 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.- Receipt # M-11325

Application No.: BOA-2020-05 Date Submitted (Complete): 2/18/2020



CITY OF KANNAPOLIS PLANNING DEPARTMENT

APPLICATION FOR A VARIANCE

I, Marie Dellinger, 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): Article 7.1

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:

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.)

Due to the creek buffer zone, additional 10 foot no-build area and easements, building a residential property is impossible.

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.)

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.)

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

Marie Dellinger
Applicant Name (Print)

2/17/2020
Date

Marie Dellinger
Applicant Signature

2/17/2020
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

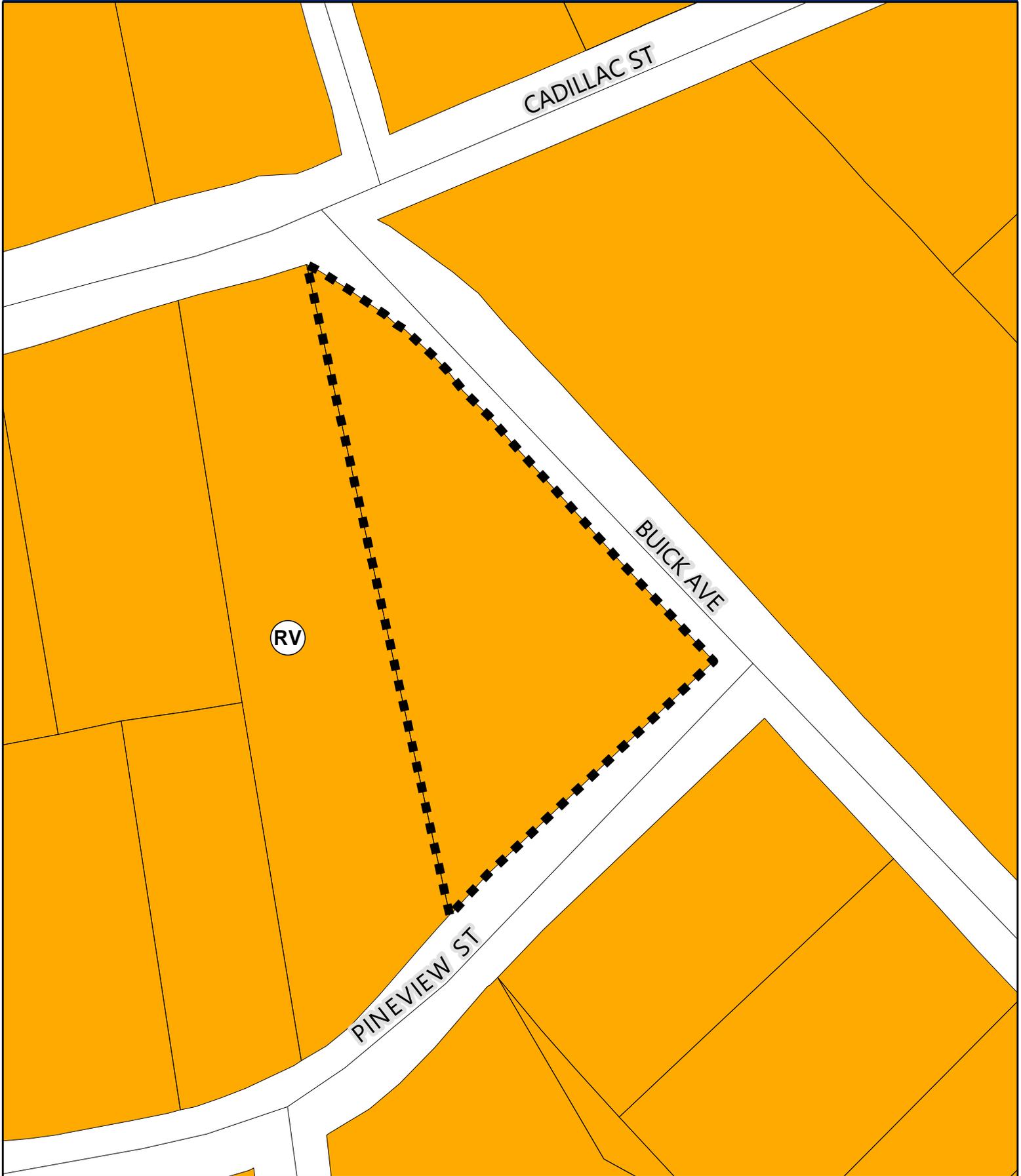
Case Number: BOA-2020-08
Applicant: Marie Dellinger
Corner of Buick Ave. & Pineview St.





Kannapolis Current Zoning

Case Number: BOA-2020-08
Applicant: Marie Dellinger
Corner of Buick Ave. & Pineview St.



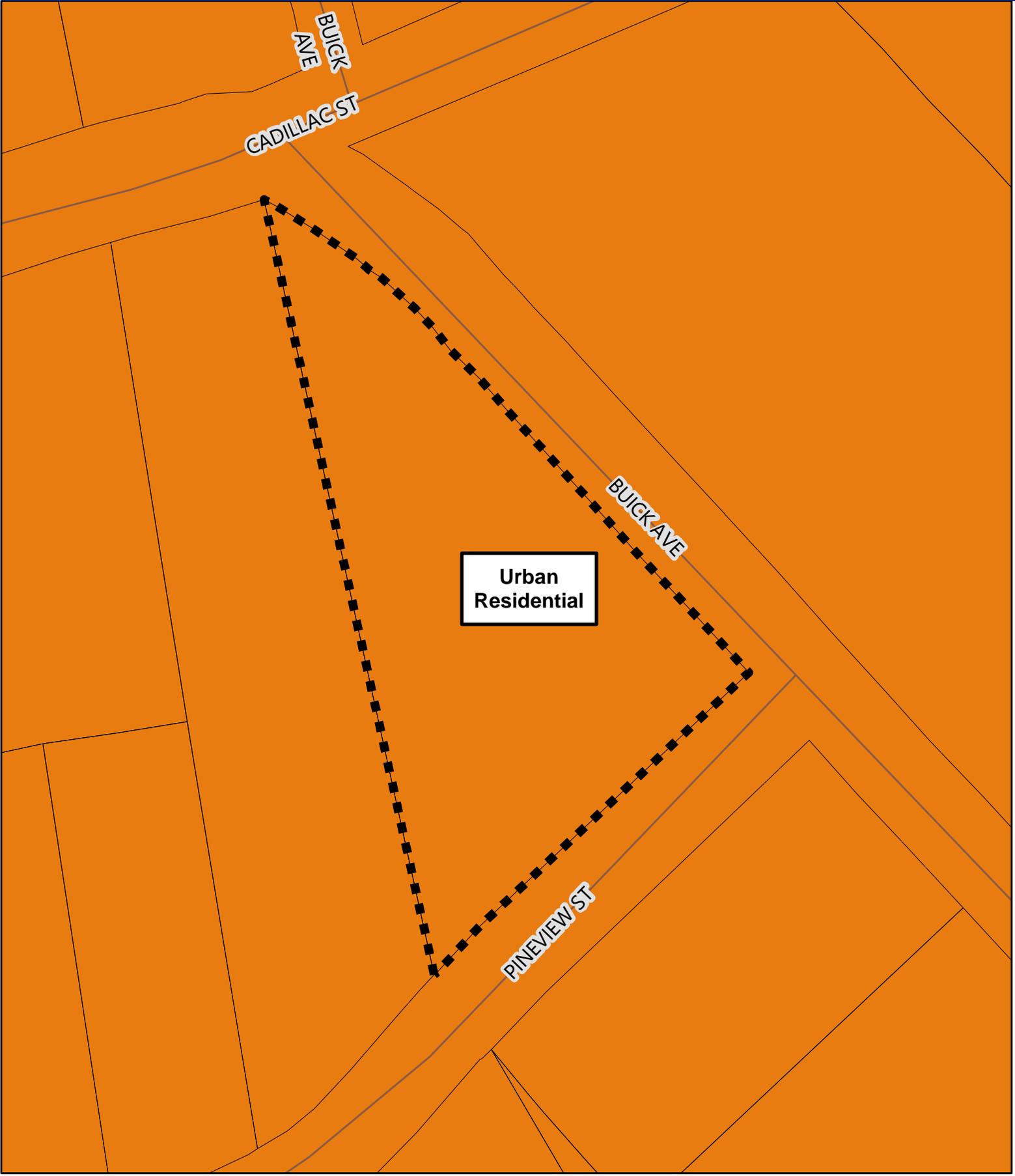


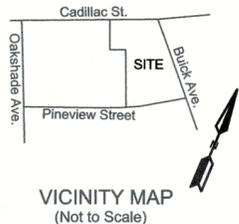
Kannapolis 2030 Future Land Use Map

Case Number: BOA-2020-08

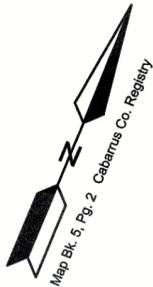
Applicant: Marie Dellinger

Corner of Buick Ave. & Pineview St.





VICINITY MAP
(Not to Scale)



Total Area
46872.89 sf
1.076 AC

Line	Bearing	Distance
L1	N 21°21'01" W	8.98'



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

Prepared for: Sol Marie Properties, LLC
1.076 AC - Cadillac Street
City of Kannapolis Cabarrus County, NC
BOUNDARY SURVEY

DATE
September 11, 2019

SCALE
1" = 30'

NLS NO.
19133

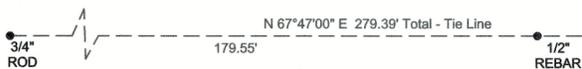
DRAWN BY
S. Kimrey

CHECKED BY
S. Dyer

NO.	DATE	REVISION	BY

SHEET
1 OF 1

- LEGEND**
- R/W - RIGHT OF WAY
 - EoP - EDGE OF PAVEMENT
 - OHE - OVERHEAD ELECTRIC
 - ⊕ - POWER POLE
 - - WATER METER
 - ⊙ - SANITARY SEWER MANHOLE



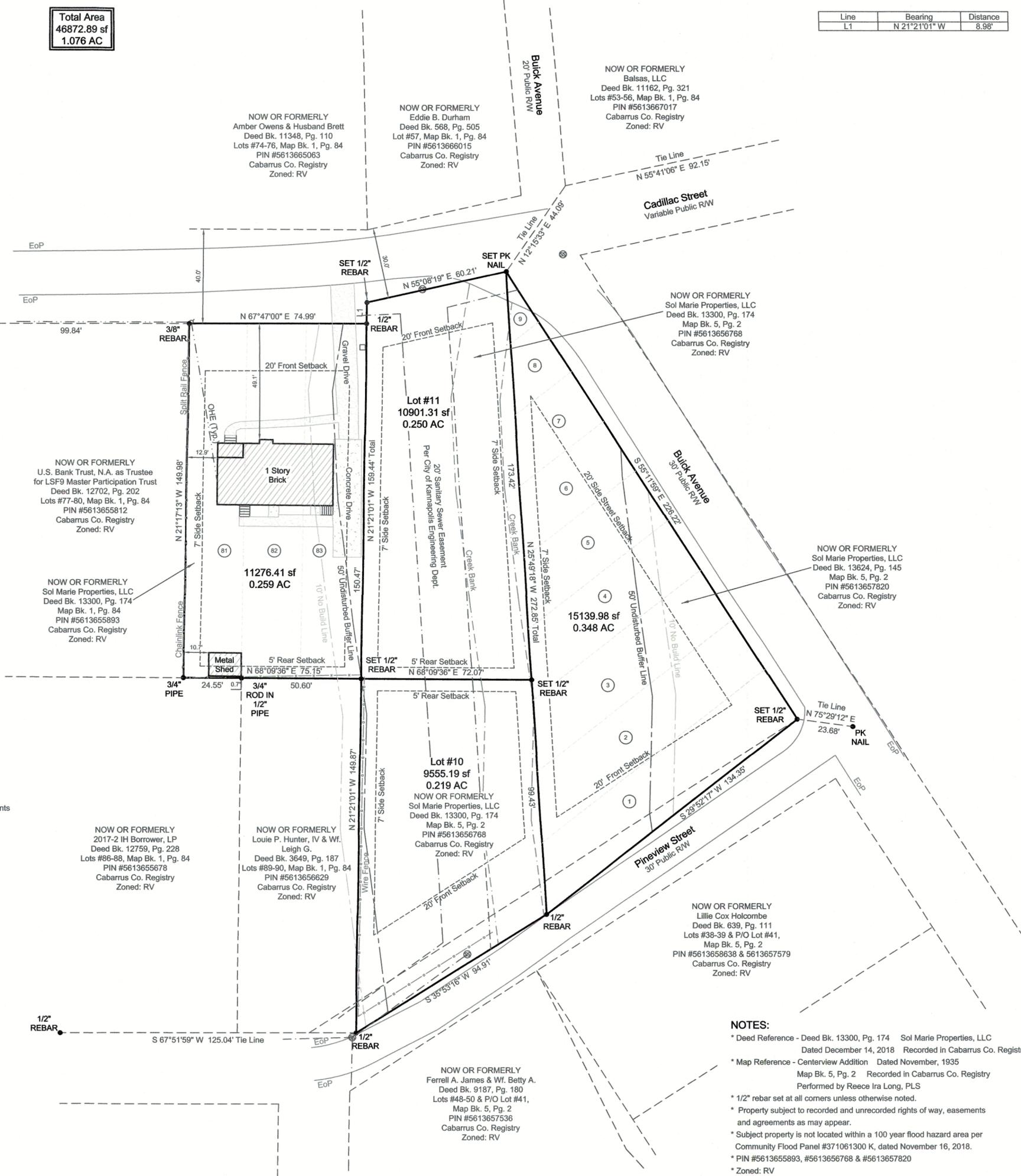
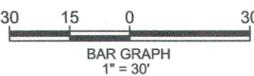
I, R. Scott Dyer, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book 13300, page 174, etc.); that the boundaries not surveyed are clearly indicated as drawn from information found in Book n/a, page n/a; that the ratio of precision as calculated exceeds 1:10,000; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56. 1600). Witness my original signature, registration number and seal this 2nd day of October, A.D., 2019.

R. Scott Dyer

R. Scott Dyer, PLS #4444



RV SETBACKS	
FRONT	20'
SIDEYARD	7'
REARYARD	5'



AcctName1	MailAddr1	MailCity	MailState	MailZipCod
2017-2 IH BORROWER LP C/O INVITATION HOMES ROSALINA ARELLANO & VERONICA CARDENAS-FERREL	1717 MAIN ST STE 2000	DALLAS	TX	75201
BALSAS LLC SCOTT & TINABYRNE CALVARY BAPTIST CHURCH KAN INC	303 CADILLAC STREET 8906 ST CROIX LN 1112 S WINDSOR DR	KANNAPOLIS CHARLOTTE KANNAPOLIS	NC NC NC	28083 28277 28081
CELIA ADAME DE AGUILERA JAMES C DEMING EDDIE & CONNIE DURHAM MAZALEE C GALLOWAY ESTATE	703 BUICK AVENUE 704 PACKARD AVE 702 PACKARD AVE 1311 LOWRANCE AVE	KANNAPOLIS KANNAPOLIS KANNAPOLIS KANNAPOLIS	NC NC NC NC	28083 28083 28083 28081
C/O GAYNELL FUNDERBURK LILLIE C HOLCOMBE LOUIE P IV & LEIGH HUNTER FERRELL & BETTY JAMES ESTATE	704 ROGERS LAKE ROAD 804 BUICK AVE 134 SPRINGWAY DR	KANNAPOLIS KANNAPOLIS KANNAPOLIS	NC NC NC	28081 28083 28081
C/O REBEKAH JAMES DOROTHY C KINCAID LF EST C/O JEFFREY H KINCAID BRITTANY MESSMER DAVID & RHONDA MOORE BRETT & AMBER OWENS DAVID REDMAN JEFFREY & MARI REID SOL MARIE PROPERTIES LLC	1902 TROUTMAN HILL RD 1480 SAW RD 803 DESOTO AVE 10533 PULLENGREEN DR 307 CADILLAC ST 1025 LAKE JASON DR 708 PACKARD AVE 1005 DAKOTA ST	KANNAPOLIS CHINA GROVE KANNAPOLIS CHARLOTTE KANNAPOLIS WHITE LAKE KANNAPOLIS KANNAPOLIS	NC NC NC NC NC MI NC NC	28083 28023 28083 28277 28083 48386 28083 28083
U S BANK TRUST TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST C/O CALIBER HOME LOANS JAMES & SUSAN VARNER JODY WRIGHT MARIE DELLINGER	3630 PEACHTREE RD NE 710 CAMPBELL RD 710 BUICK AVE 1005 DAKOTA ST	ATLANTA KANNAPOLIS KANNAPOLIS KANNAPOLIS	GA NC NC NC	30326 28081 28083 28083



February 26, 2020

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 March 17, 2020 at City Hall, located at 401 Laureate Way, for the following case:

BOA-2020-08 - Variance – Unaddressed parcel on Buick Ave.

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 Village (RV) zoning district. The applicant is requesting a variance from the front yard setback to allow development of a single-family structure. The subject property is approximately .40 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Numbers 5613-65-7820. **(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

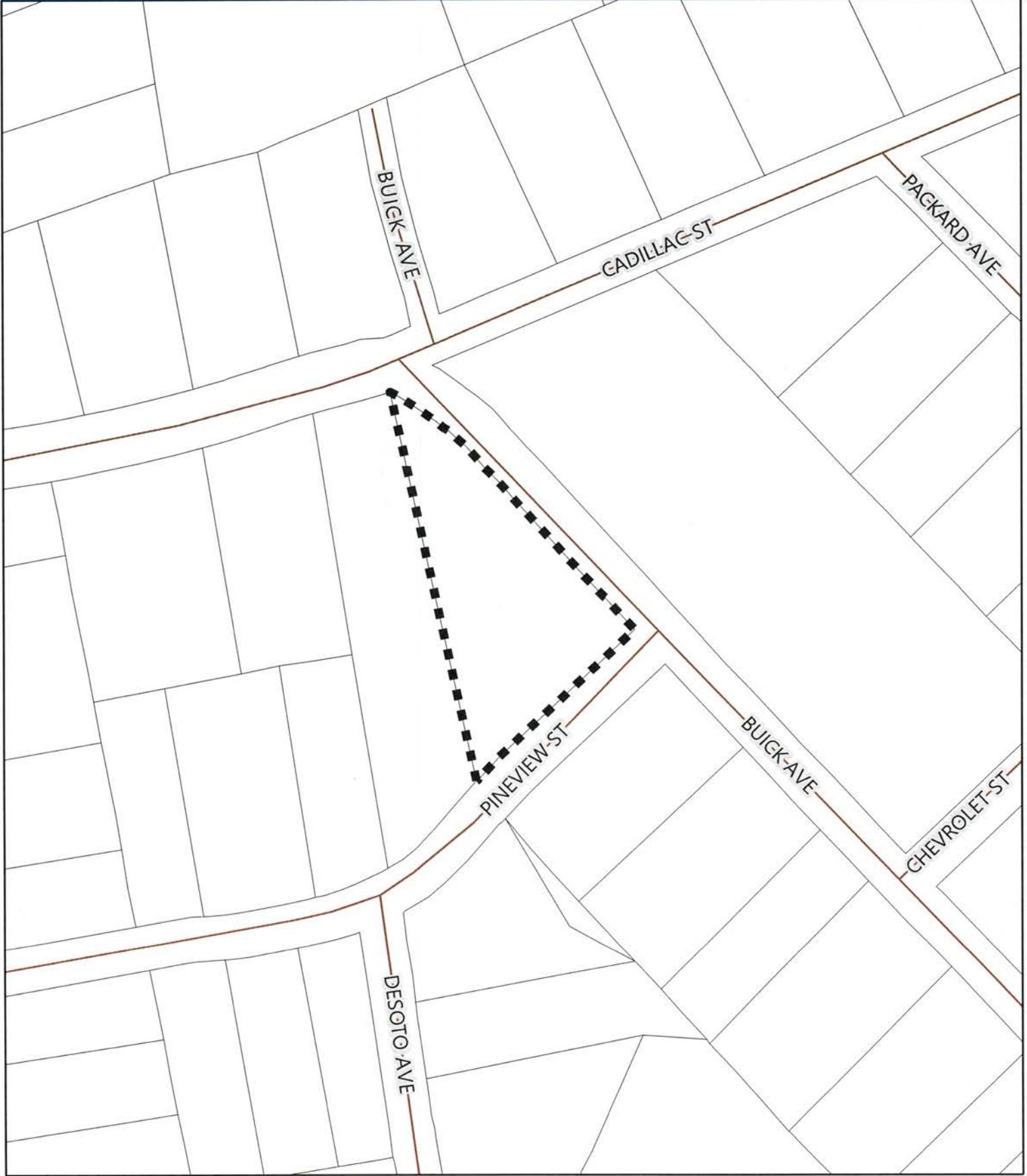
Enclosure

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-2020-08
Applicant: Marie Dellinger
Corner of Buick Ave. & Pineview St.





BOARD OF

ADJUSTMENT

**PUBLIC HEARING
INFORMATION**

CALL 704-920-4350

CASE # BOA - 2020 - 08

STOP