



**Board of Adjustment
July 14, 2020**

Staff Report

TO: Board of Adjustment
FROM: Ryan Lipp – Senior Planner
SUBJECT: Case# BOA-2020-11: Variance – 411 Kimball Avenue

Request for variance from the provisions of Article 4, Table 4.7-1 of the Unified Development Ordinance (UDO) of minimum front setback from what is required in the Residential Village (RV) Zoning District to allow for a subdivision.

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, Matthew Erich, is requesting a variance from Article 4, Table 4.7-1 of the Unified Development Ordinance in order to subdivide one (1) parcel into two (2) located at 411 Kimball St, further identified as Rowan County Parcel Identification Number 152-106. The subject property is approximately .217 +/- acres. There is currently a home on the lot. Without the variance, the City is unable to approve the subdivision of the lot. The Residential Village (RV) zoning district requires a minimum front setback of 20 feet. The existing home is 5.9 feet off the front lot line.

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 current structure has existed in its current configuration since the 1920s. The owner of the property is requesting the variance in order to subdivide the structure onto a separate parcel. Without the proposed variance, the City would be unable to approve the plat, as the structure would violate the current ordinance regulations for minimum front setback.

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

The location of the structure has not changed since the 1920s.

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 structure has been unchanged since the 1920s.

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 homes more into conformance with the UDO, as well as, eliminate an unbuildable lot.

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



**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 | <input type="checkbox"/> | Nonconformity Adjustment | _____ |
| Subdivision Exception | <input type="checkbox"/> | Watershed Boundary Modification | _____ |
| Zoning Text Amendment | <input type="checkbox"/> | Zoning Map Amendment | _____ |
| Appeal | <input type="checkbox"/> | Conditional Zoning Map Amendment | _____ |

Applicant: Matthew Erich Owner: Same

Address: 19037 Chandlers Landing Dr Address: _____
Cornelius, NC 28031 _____

Telephone: 317-435-9781 Telephone: _____

Email: merich@callmylist.com Email: _____

Legal relationship of applicant to property owner: Same

Property Location/Address: 411 Kimball

Tax Parcel Number: 152 106 Zoning District: RV Acreage of Site: .217

Matthew Erich _____
Applicant Name (Print) Property Owner Name (Print)

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: _____ Receipt # _____

Application No.: _____ Date Submitted (Complete): _____



CITY OF KANNAPOLIS PLANNING DEPARTMENT

APPLICATION FOR A VARIANCE

I, Matthew Erich, 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): Table 4.6-1 - front and side setbacks

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:

- A variance will be needed to rectify the non-conformities for setback encroachment into the front and side setback of the lot lines closest to Kimball St. This will need to be done prior to the plat being approved

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.)

Can't subdivide without the variance

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.)

Existing since approximately 1968

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.)

Purchased property in 2019

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.)

Will not be able to subdivide property to remove SFR from the mobile home park

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

Matthew Erich

Applicant Name (Print)

2/28/2020

Date

Applicant Signature

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.

STAFF USE ONLY

Scheduled meeting date: _____

Dates advertised in newspaper: _____ and _____

Date written notices mailed: _____

Board Decision: _____

Conditions: _____

Date written notice of decision sent to applicant: _____



Vicinity Map

Case Number: BOA-2020-11
Applicant: Matthew Erich
411 Kimball St.





Kannapolis Current Zoning

Case Number: BOA-2020-11

Applicant: Matthew Erich
411 Kimball St.



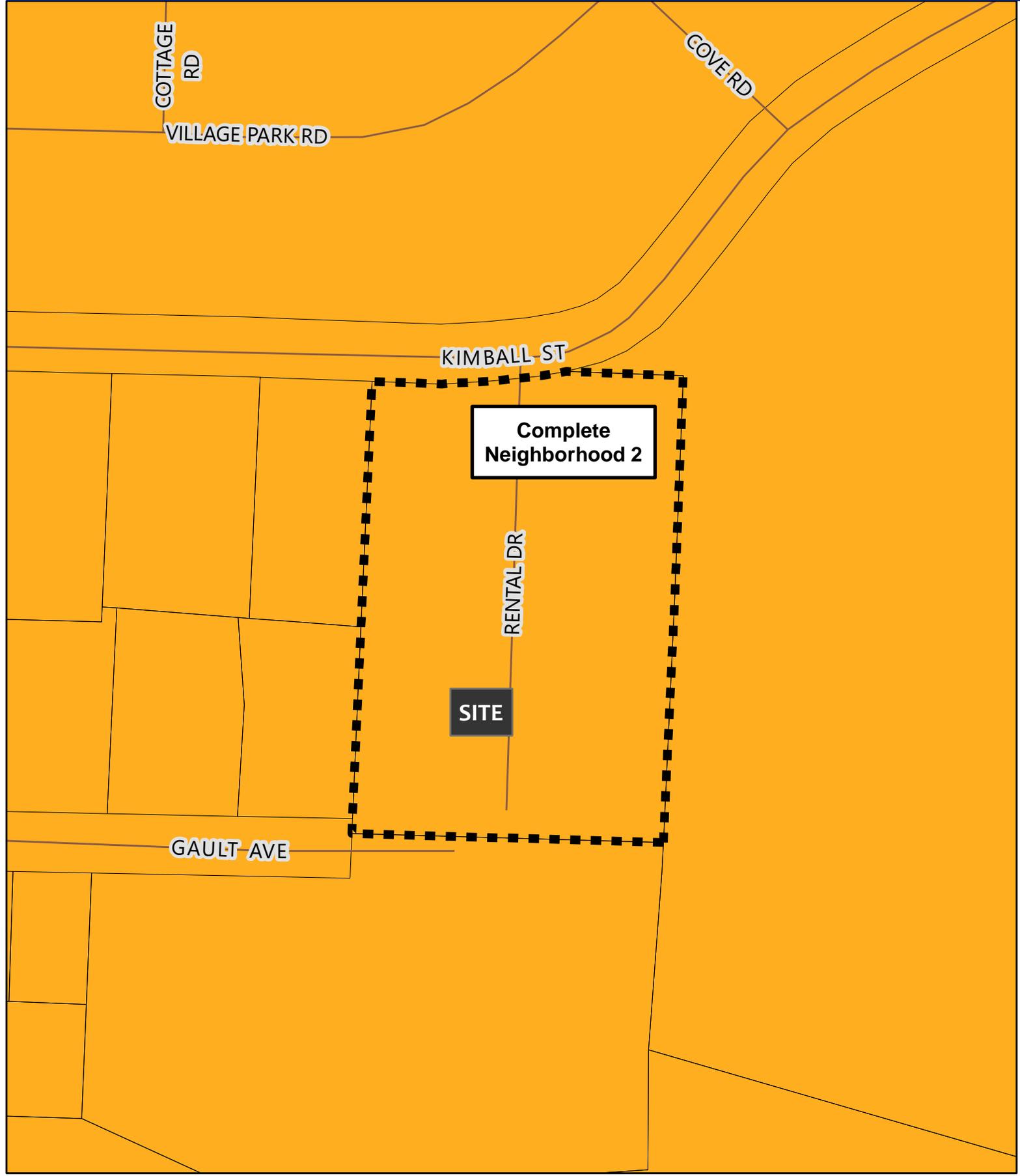


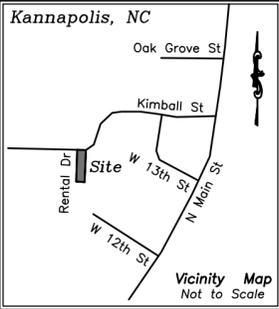
Kannapolis 2030 Future Land Use Map

Case Number: BOA-2020-11

Applicant: Matthew Erich

411 Kimball St.

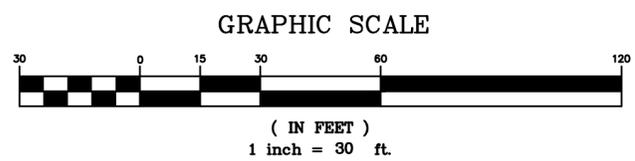




I, Mark S. Pence, Hereby certify that this map was drawn from an actual survey made under my direct supervision (Deed Description recorded in Deed Book 1324 Page 88; that the Ratio of Precision 1:20,000 as calculated, that the boundaries not surveyed are shown as broken lines plotted from information as referenced herein; that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this the 29th day of January 2017.

That the survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land.

N. C. Professional Land Surveyor L-3680



- Notes:
- * Tax Parcel #152 106
 - * Total Site Acreage = 1.476 Acres (64,310 SF)
 - * Site Zoning: RV
 - * Setbacks Per Zoning:
 - Front = 20'
 - Side = 7'
 - Rear = 5'
 - * Minimum Lot Size = 7,500 SF
 - * Minimum Lot Width = 60'
 - * 2 new lots are created on this plat.
 - * No new streets are created on this plat.
 - * Property lies in the City of Kannapolis

Flood Note:

- * This property is not located within a special Flood Hazard Zone according to the Flood Insurance Rate Map (Community Panel) 3710561400K, Dated 11-16-2018.

Watershed:

- * This site does lie in the WS-II Balance of Watershed of the Yadkin/ Coddle Creek Watershed.

Surveyor Notes:

- * This property is subject to all easements, rights-of-ways and restrictions of record.
- * #4 Rebars to be set at all new property corners.
- * No NCGS Control Monument located within 2,000' of subject property.

Easement Statement:

Encroachment of any structures or landscaping, including, but not limited to, driveways, pools, fences, trees, wells, reservoirs, or other obstructions, which interfere with free, easy, and clear access to utilities on any easement, are prohibited. However, certain structures, filling, or grading may be permitted upon execution of an express Encroachment Agreement. The City of Kannapolis may authorize an Encroachment Agreement, but only after review and approval of detailed plans.

Public Utility Easement Statement

All open space depicted or identified on this plat shall be subject to and encumbered by a general public utility easement in gross benefiting the City of Kannapolis. The City of Kannapolis, its agents, employees, successors, and assigns shall have the right of ingress, egress, and regress over and upon any property designated on this plat as open space for the purpose of locating, laying, constructing, reconstructing, inspecting, operating, extending, maintaining and otherwise keeping open and in good repair any public municipal utility including, but not limited to, water systems, sanitary sewer systems, and public stormwater systems.

Plat Review Officer Certificate

State of North Carolina
County of Rowan
I, _____, Review Officer of Cabarrus County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Review Officer _____ Date _____

Certificate of Final Plat Approval

By authority of the City of Kannapolis Subdivision Regulations, this final plat for the Matthew C. Erich Subdivision is hereby approved.

Date _____ Director of Planning _____

Date _____ City Engineer _____

Date _____ Public Works Director _____

Certificate of Ownership & Dedication

I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the City of Kannapolis, and that I hereby submit this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate to public use all areas shown on this plat as streets, walks, parks, open space and easements, except those specifically indicated as private, and that I will maintain all such areas until accepted by the City of Kannapolis, and further that I hereby guarantee that I will correct defects or failure of improvements in such areas for a period of one year commencing after a certificate of approval has been executed by the city, or after final acceptance of required improvements, whichever occurs later.

Owner - Matthew C. Erich _____ Date _____

State of North Carolina
County of Iredell

I, Joyce Rietman, a Notary Public of the County and State aforesaid, certify that Matthew C. Erich did personally appear before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp and seal.
This ____th Day of _____ 2020.

Notary Public: _____

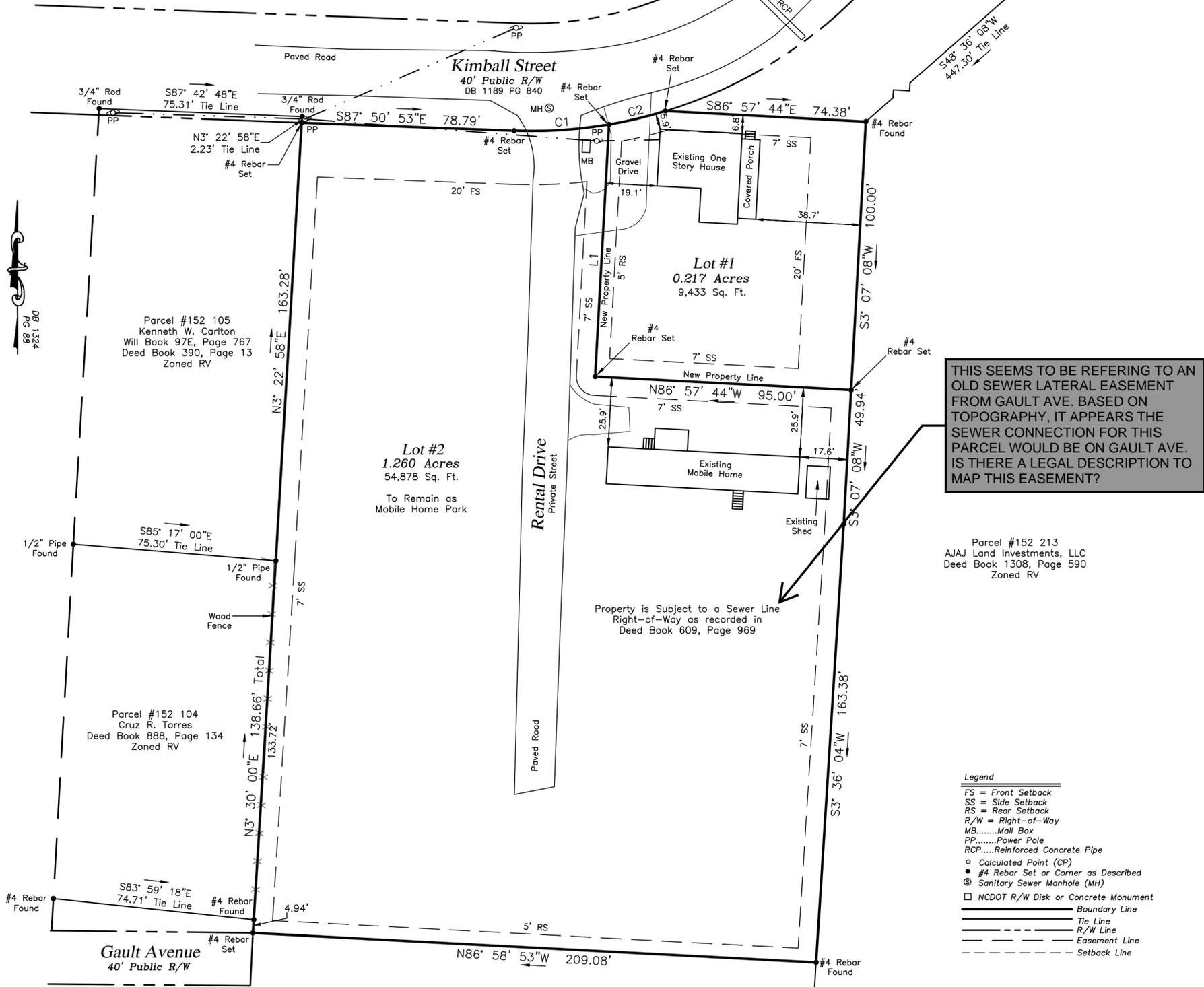
My Commission Expires : 12/15/2023

Job No: 200105

PLEASE INCLUDE THE FOLLOWING NOTES:

--SANITARY SEWER CLEAN OUTS AND WATER METERS SHALL NOT BE LOCATED WITHIN DRIVEWAYS.

--APPROVAL OF THIS PLAT DOES NOT PERMIT THE OWNER THE RIGHT TO ALTER PIPE, FILL, OR RELOCATE ANY EXISTING DRAINAGE FEATURE LOCATED ON THE PROPERTY WITHOUT SUBMITTING ENGINEERING PLANS FOR REVIEW AND APPROVAL TO THE CITY OF KANNAPOLIS AND OTHER APPROPRIATE AGENCIES.



THIS SEEMS TO BE REFERRING TO AN OLD SEWER LATERAL EASEMENT FROM GAULT AVE. BASED ON TOPOGRAPHY, IT APPEARS THE SEWER CONNECTION FOR THIS PARCEL WOULD BE ON GAULT AVE. IS THERE A LEGAL DESCRIPTION TO MAP THIS EASEMENT?

Parcel #152 213
AJAJ Land Investments, LLC
Deed Book 1308, Page 590
Zoned RV

- Legend
- FS = Front Setback
 - SS = Side Setback
 - RS = Rear Setback
 - R/W = Right-of-Way
 - MB.....Mail Box
 - PP.....Power Pole
 - RCP.....Reinforced Concrete Pipe
 - o Calculated Point (CP)
 - #4 Rebar Set or Corner as Described
 - ⊙ Sanitary Sewer Manhole (MH)
 - NCDOT R/W Disk or Concrete Monument
 - Boundary Line
 - - - Tie Line
 - - - R/W Line
 - - - Easement Line
 - - - Setback Line

Curve Table

Curve	Radius	Length	Chord Direction	Chord Length
C1	170.00'	35.32'	N86° 14' 08"E	35.25'
C2	170.00'	21.52'	S76° 39' 29"W	21.50'

Line Table

Line	Direction	Length
L1	N3° 07' 08"E	93.94'

Minor Subdivision Plat of
1.476 Acres located on Kimball Street,
prepared for Matthew C. Erich

China Grove Township Kannapolis, NC Rowan County
Scale 1" = 30' Date of Plat, January 29th, 2020
Tax Parcel: #152 106, Deed Book 1324, Page 88
Owner: Matthew C. Erich
19037 Chandlers Landing Drive, Cornelius, NC 28031
Site Address: 411 Rental Drive, Kannapolis, NC 28081

PIEDMONT DESIGN ASSOCIATES, P.A.
ENGINEERING - SURVEYING - PLANNING
Suite 101 Westfield Center, 125 E. Plaza Dr., Mooresville, N.C. 28115
Phone (704) 664-7888 Fax (704) 664-1778
Corporate License #C-1007

AcctName1	MailAddr1	MailCity	MailState	MailZipCod
COTTAGE COVE LLC				
C/O NODEL PARKS	3000 TOWN CTR SUITE 540	SOUTHFIELD	MI	48075-1173
RONALD PERRY	2015 W C ST	KANNAPOLIS	NC	28081-9383
ESTEBAN TAVIRA & ELOISA RODRIQUEZ	422 GAULT AVE	KANNAPOLIS	NC	28081-2209
CRUZ R TORRES	416 GAULT AVE	KANNAPOLIS	NC	28081-2209
KENNETH CARLTON				
C/O DANNY PAYNE	4504 VINCENT ST	KANNAPOLIS	NC	28081-0000
TERRY ALLMAN	1133 MISTY TUNNEL LN	MOORESVILLE	NC	28115-4302
LAWRENCE JR & SHARON MASON	411 GAULT AVE	KANNAPOLIS	NC	28081-2200
ALICIA DIXON	421 GAULT AVE	KANNAPOLIS	NC	28081-2200
N KANNAPOLIS BAPTIST CHURCH	312 LOCUST ST	KANNAPOLIS	NC	28081-2270
N KANNAPOLIS WESLEYAN	314 W 12TH ST	KANNAPOLIS	NC	28081-2276
ANTONIO ADAME	207 KIMBALL ST	KANNAPOLIS	NC	28081-0000
ENRIQUE RUBIO	421 KIMBALL ST APT D	KANNAPOLIS	NC	28081-2289
MATTHEW ERICH	19037 CHANDLERS LANDING DR.	CORNELIUS	NC	28031

June 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 July 14, 2020 at City Hall, located at 401 Laureate Way, for the following case:

BOA-2020-11 - Variance – 411 Kimball St.

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 and side yard setbacks which will allow subdividing the property in two (2) parcels. The subject property measures approximately .21 +/- acres and is more specifically identified as Rowan County Parcel Identification Numbers 152 106. **(Please see reverse side of this letter for vicinity map showing the location of this property.)**

You are being notified because you are an abutting property owner.

NOTE: IN ORDER TO COMPLY WITH FEDERAL, STATE AND LOCAL RESTRICTIONS IMPOSED IN RESPONSE TO THE COVID-19 VIRUS, SOCIAL DISTANCING PRACTICES WILL BE OVSERVED DURING THIS MEETING.

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

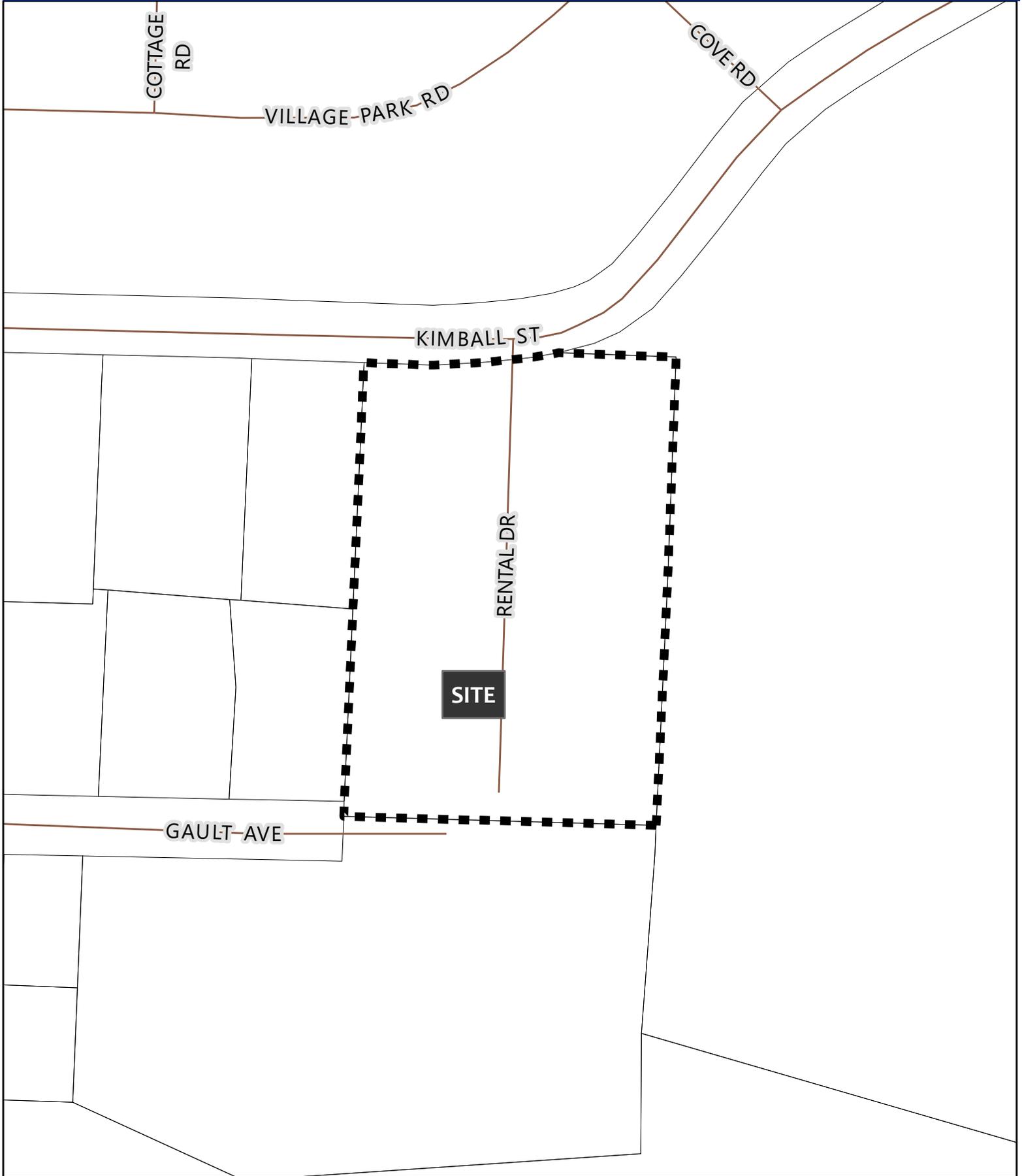
Enclosure

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the City of Kannapolis, should contact the office of Tina H. Cline, Human Resource Director, by phone at 704-920-4302 or by email at tcline@kannapolisnc.gov as soon as possible but no later than 48 hours before the scheduled event



Variance

Case Number: BOA-2020-11
Applicant: Matthew Erich
411 Kimball St.



KANSAS
BOARD OF

ADJUSTMENT
PUBLIC HEARING
INFORMATION
CALL 704-920-4350
CASE # 104 - 2970 - 11

