



**Board of Adjustment  
July 14, 2020**

**Staff Report**

**DATE:** July 6, 2020  
**TO:** Board of Adjustment  
**FROM:** Gretchen Coperine, AICP, Assistant Planning Director  
**SUBJECT:** Case # BOA-2020-12 701 Smith Street CONA

**Request for a Certificate of Nonconformity Adjustment to allow for an expansion of a non-conforming accessory structure.**

**A. Action 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, or deny the applicant's request for a Certificate of Nonconformity Adjustment

**B. Required Votes to Pass Requested Action**

A majority vote is required to approve or deny the requested actions.

**C. Background**

The applicant, Olga Lidia Moreno, is requesting a Certificate of Nonconformity Adjustment (CONA), to allow for the expansion of an existing non-conforming storage accessory structure. The existing space is 22 feet x 10 feet. The new space is proposed to be 22 feet x 8 feet.

The existing structure is located at 701 Smith Street. The parcel on which it is located is identified as Cabarrus County Parcel Identification Number (PIN) 5613969776 (approximately 0.22 acres). This parcel is currently zoned RV (Residential Village).

The Unified Development Ordinance (UDO) Article 4, Table 4.7-1 *Dimensional and Density Standards* requires the following setbacks for accessory structures in the RV zone: 5 feet at the side and 5 feet at

the rear. The existing non-conforming accessory structure is closer than 5 feet on the east property line. In order to expand the structure, a CONA is required. The expansion will not be any closer to the property line than the existing.

#### **D. Policy Issues**

**Section 13.1.6.1** of the UDO states: *A Certificate of Nonconformity Adjustment shall be required to enlarge, expand or otherwise alter any Nonconforming Use or Structure as set forth in this Section 13.1. A Certificate of Nonconformity Adjustment shall be issued by the Board of Adjustment subject to the requirements of this section.*

**Section 13.1.6.3** of the UDO states that: *The decision to approve or deny will be made based on the following criteria:*

**Noise - Does the nonconformity create noise above and beyond levels considered normal to the area?**

Staff Assessment

There are no anticipated noise impacts associated with the proposed use.

**Traffic - Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?**

Staff Assessment

The expansion will not generate additional traffic.

**Other measurable, physical effects - Does the nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.?**

Staff Assessment

No negative effects are anticipated.

**Surrounding property values - Does the nonconformity detract from the prevailing property values?**

Staff Assessment

The proposed expansion is not anticipated to detract from surrounding property values.

**Aesthetics - Does the nonconformity compliment or detract from the overall aesthetic character of the area?**

Staff Assessment

The overall character of the area is residential. The proposed expansion will continue to be consistent with the aesthetic character of the area.

#### **E. Legal Issues**

**Board's Findings of Fact - Based on application review and public hearing.**

In order to determine whether to grant a Certificate of Nonconformity Adjustment, the Board must find that each of the five criteria noted above have been met. If the Board concurs with the staff assessments

for each of the criteria, then no additional findings of fact are necessary and the Board may adopt the staff findings as part of its decision. However, if the Board wishes 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 five criteria below.

Should a certificate of nonconformity adjustment be approved, the Board may impose such reasonable conditions as will ensure that the use of the property to which the certificate applies will be as compatible as practicable with the surrounding properties. Any approval granted will “run with the land” and subject all future property owners to the same restrictions.

Yes      No

           **Noise - Does the nonconformity create noise above and beyond levels considered normal to the area?**

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           **Traffic - Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?**

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           **Other measurable, physical effects - Does the nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.?**

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           **Surrounding property values - Does the nonconformity detract from the prevailing property values?**

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           **Aesthetics - Does the nonconformity detract from the prevailing property values?**

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**F. Recommendation**

Based upon an assessment of the criteria noted above, **staff recommends approval** of the applicant’s request for a Certificate of Nonconformity Adjustment to allow for the expansion of a non-conforming accessory structure on Cabarrus County Parcel Identification Number (PIN) 5613969776.

*However, the Board of Adjustment should consider all facts and testimony after conducting the public hearing and render a decision accordingly to either approve, approve with conditions, or deny the request for a Certificate of Nonconformity Adjustment.*

**G. Attachments**

1. CONA Application
2. Vicinity Map
3. Zoning Map
4. Future Land Use Map
5. List of notified properties
6. Letter to Adjacent Properties
7. Posted Public Notice

**H. Issue Reviewed By:**

Planning Director	X
City Attorney	X

\$325.<sup>00</sup>  
April 21, 2020  
Due by March 21, 2021



**Planning and Zoning Commission and Board of Adjustment**  
**General Application Form**  
(Not for Site Plan Review Submittals)

Type of Action Requested (Check One):

- |                        |       |                                  |                                     |
|------------------------|-------|----------------------------------|-------------------------------------|
| Variance               | _____ | SIA Application                  | _____                               |
| Conditional Use Permit | _____ | Nonconformity Adjustment         | <input checked="" type="checkbox"/> |
| Subdivision Exception  | _____ | Watershed Boundary Modification  | _____                               |
| Zoning Text Amendment  | _____ | Zoning Map Amendment             | _____                               |
| Appeal                 | _____ | Conditional Zoning Map Amendment | _____                               |

Applicant: Olga Lidia Moreno Owner: Self  
 Address: 701 Smith St. Address: \_\_\_\_\_  
Kannapolis NC 28083  
 Telephone: 704 351-4706 Telephone: \_\_\_\_\_  
 Email: \_\_\_\_\_ Email: \_\_\_\_\_

Legal relationship of applicant to property owner: Self  
 Property Location/Address: 701 Smith St.

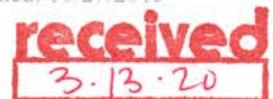
Tax Parcel Number: \_\_\_\_\_ Zoning District: \_\_\_\_\_ Acreage of Site: \_\_\_\_\_  
Olga Lidia Moreno Olga Lidia Moreno  
 Applicant Name (Print) Property Owner Name (Print)  
~~x~~ Olga Moreno x Olga Moreno 03/06/20  
 Applicant Signature & Date Property Owner Signature & Date

*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 - Receipt # M-11344  
 Application No.: BOA-2020-12 Date Submitted (Complete): 3.13.20

Last Updated: 10/27/2015





**City of Kannapolis - Request for Certificate of Nonconformity Adjustment**

I, Olga Lidia Moreno, hereby petition the Board of Adjustment for a CERTIFICATE OF NONCONFORMITY ADJUSTMENT as required by Section 13.1.6 of the Unified Development Ordinance to enlarge, expand, or otherwise alter a Nonconforming Use or Structure.

The current use of the property is described as follows:

Storage structure 22 L x 10 W

The location of the nonconforming use or structure is indicated on the accompanying site plan. The degree of nonconformity with respect to the dimensional and design regulations of the Ordinance is more fully described as follows:

Back yard of the house 27ft away from the main Dwelling.

The nature of the proposed enlargement, expansion, or alteration is described as follows:

Expand a space to gather in a closed space.

**APPROVAL CRITERIA**

The Board of Adjustment does not have unlimited discretion in deciding whether to approve a certificate of nonconformity adjustment. The Unified Development Ordinance requires that the applicant demonstrate positive responses to several questions to obtain a certificate of nonconformity adjustment. In the spaces provided below, indicate the *facts* that you intend to provide to convince the Board that the proposed enlargement, expansion, or alteration can properly address the following questions:

**A. Does the nonconformity create noise above and beyond levels considered normal to the area?**

No this will be a closed room to gather w/ friends. in the space.

**B. Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?**

No

**C. Does the nonconformity generate any other negative effects, including, but not limited to, dust, air pollution, foul smell, etc.?**

No

**D. Does the nonconformity detract from the prevailing property values?**

NO.

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

R. d. g. m. m. m. n. o.  
Signature of Property Owner

3/6/2020  
Date

The Board of Adjustment may add conditions regarding what the nonconformity owner/operator must do to the property for certification. For example, landscaping or fencing may be required or a shift of operations away from adjoining properties may be stipulated.

**Fee:** Please refer to fee schedule to determine applicable fees.  
Fees are nonrefundable and help to cover administrative and notification costs.

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**STAFF USE ONLY**

Scheduled meeting date: \_\_\_\_\_  
Dates advertised in newspaper: \_\_\_\_\_ and \_\_\_\_\_  
Date written notices mailed: \_\_\_\_\_

**Board decision:** \_\_\_\_\_  
**Conditions:** \_\_\_\_\_  
\_\_\_\_\_

Date written notice sent to applicant: \_\_\_\_\_



# Vicinity Map

Case Number: BOA-2020-12

Applicant: Olga Lidia Moreno

701 Smith St



JOHNDY AVE

SITE

SMITH ST



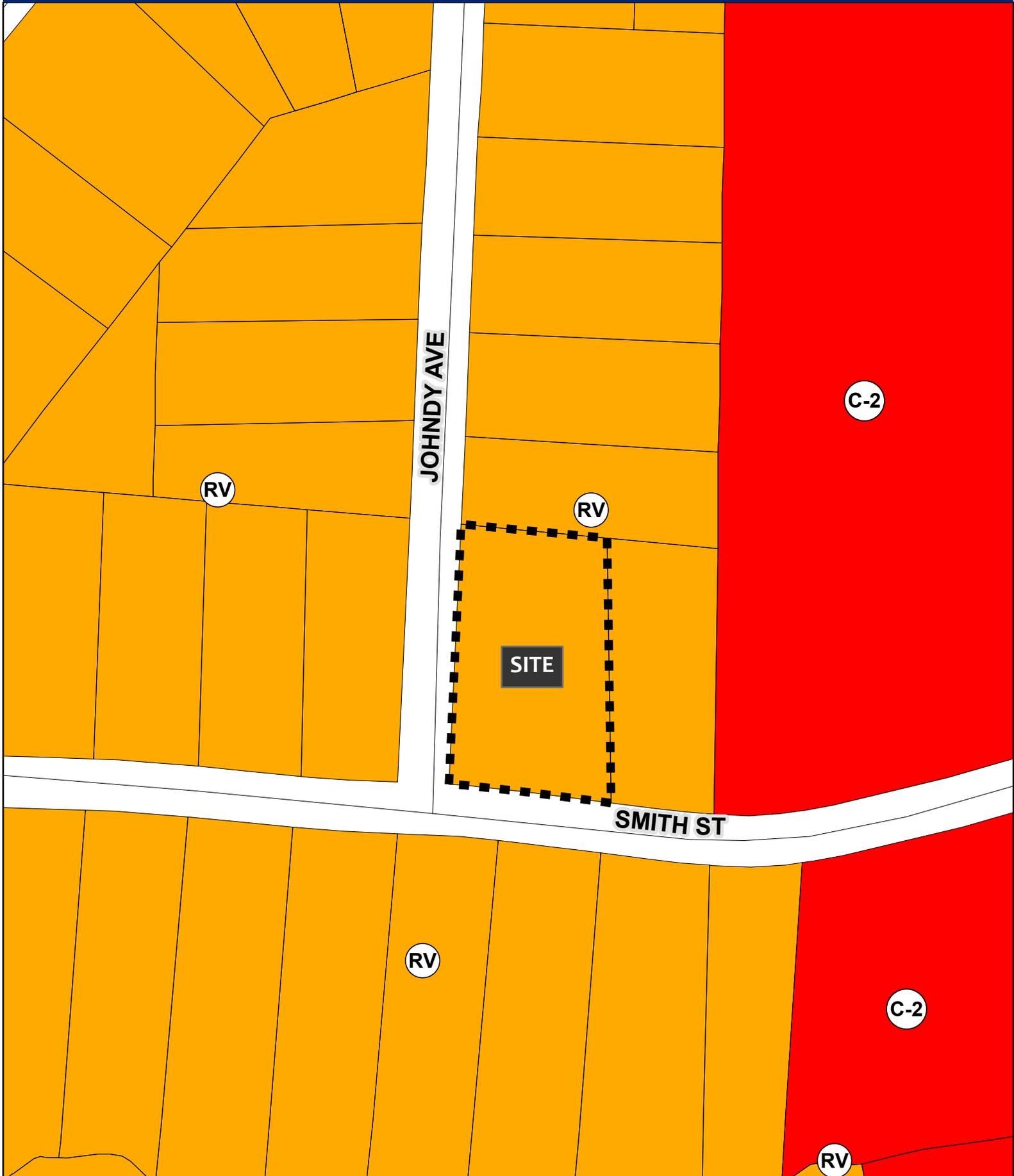


# Kannapolis Current Zoning

Case Number: BOA-2020-12

Applicant: Olga Lidia Moreno

701 Smith St



# Kannapolis 2030 Future Land Use Map

Case Number: BOA-2020-12

Applicant: Olga Lidia Moreno

701 Smith St



Urban Residential

SITE

Suburban Activity 2

JOHNDY AVE

SMITH ST

AcctName1	MailAddr1	MailCity	MailState	MailZipCod
MARTHA MACON & POLLY TROTT	500 S CANNON BLVD	KANNAPOLIS	NC	28083
DAVID MILLER REALTY & INVESTMENT INC	1640 DALE EARNHARDT BLVD	KANNAPOLIS	NC	28083
KANNAPOLIS REAL ESTATE AGENCY	500 S CANNON BLVD	KANNAPOLIS	NC	28083
MYRTLE G LITTLE LF EST	636 SMITH ST	KANNAPOLIS	NC	28083
HABITAT FOR HUMANITY	8 CHURCH ST S	CONCORD	NC	28025
IRIS HUNTER				
C/O WANDA BROWN	546 MCFARLAND DR	NEWARK	DE	19702
MICHELLE LITTLE	639 SMITH ST	KANNAPOLIS	NC	28083
CAROLYN CONTRERAS-GUZMAN	13902 ROANOKE ST	WOODBIDGE	VA	22191
BRIAN & LORRAINE MACLEOD	PO BOX 214	MOUNT MOURNE	NC	28123
ROBERT & TAMMIE PHIFER	635 SMITH ST	KANNAPOLIS	NC	28083
JOURNEY CAPITAL LLC	6220 HUDSPETH RD	HARRISBURG	NC	28075
ADNAN & ZENITA AGOVIC	700 SMITH ST	KANNAPOLIS	NC	28083
SARAH GLENN	1101 SKYLAND STREET	KANNAPOLIS	NC	28081
TERRY PARHAM	490 CHALK MAPLE RD	CHINA GROVE	NC	28023
AMY BANKHEAD	210 JOHNDY STREET	KANNAPOLIS	NC	28083
STANFRED DUREN				
C/O ROBERT DUREN	4007 COCKLEREECE DR	GREENSBORO	NC	27405
C R STEWART				
C/O LEONARD STEWART	P O BOX 16301	SANTA FE	NM	87506
ALAN & KATHLEEN SCALES	212 JOHNDY AVE	KANNAPOLIS	NC	28083
OLGA MORENO	701 SMITH ST	KANNAPOLIS	NC	28083
SOMERSON STELLA	702 SMITH ST	KANNAPOLIS	NC	28083
J CARLYLE RUTLEDGE ESTATE				
C/O MARTHA MACON	500 S CANNON BLVD	KANNAPOLIS	NC	28083
LISA LITTLE & JULIA LITTLE	636 SMITH ST	KANNAPOLIS	NC	28083
FAMILY TRUST OF JAMES WILLIAMS				
C/O ELIZABETH ROSE	204 JOHNDY AVE	KANNAPOLIS	NC	28083
SOCAP WILSON LLC	PO BOX 1110	INDIAN TRAIL	NC	28079
ALLEN R JOHNSON JR	652 WILSON ST	KANNAPOLIS	NC	28083



June 26, 2020

Dear Property Owner,

**Please be advised that the City of Kannapolis Board of Adjustment will conduct a quasi-judicial public hearing on Tuesday, July 14, 2020 at 6:00 PM at City Hall, located at 401 Laureate Way, for the following case:**

**BOA-2020-12 – Certificate of Nonconformity Adjustment (CONA) – 701 Smith St.**

Under the terms of the Unified Development Ordinance (UDO), a CONA is required to enlarge, expand, or otherwise alter any nonconforming use or structure. The applicant is requesting to expand an existing nonconforming accessory building on property located at 701 Smith Street. The property is zoned RV (Residential Village), measures approximately .21 +/- acres, and is more specifically identified as Cabarrus County Parcel Identification Number 5613-96-9776. **(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 OBSERVED 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,

Gretchen Coperine, AICP  
Assistant Planning Director

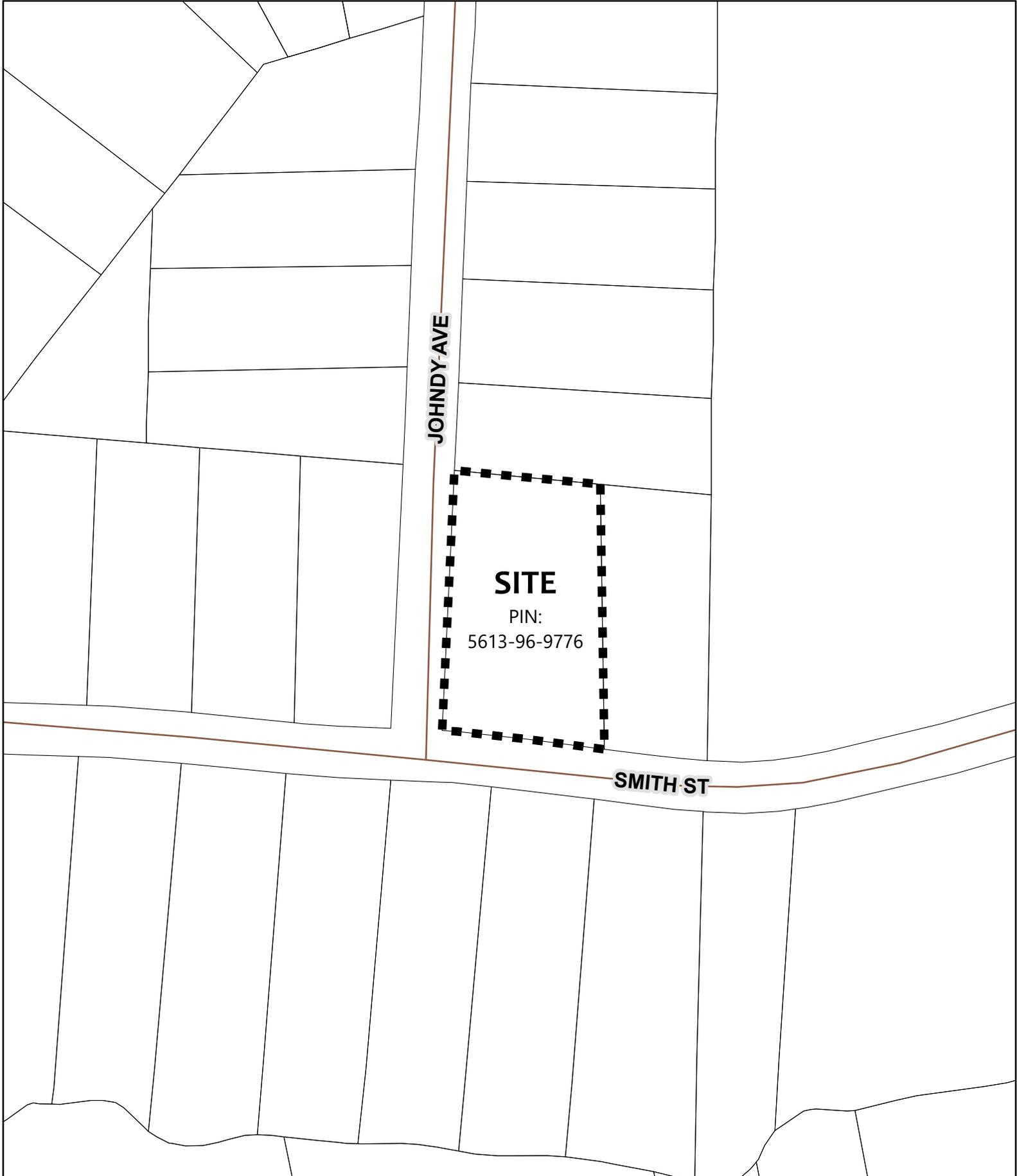
Enclosure

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 [tccline@kannapolisnc.gov](mailto:tccline@kannapolisnc.gov) as soon as possible but no later than 48 hours before the scheduled event



# Certificate of Nonconformity Adjustment

Case Number: BOA-2020-12  
Applicant: Olga Lidia Moreno  
701 Smith St



JOHNDY ST  
SMITH ST  
700

BOARD OF  
ADJUSTMENT  
PUBLIC HEARING  
INFORMATION  
CALL: 704-528-4398  
CASE #01-2018-11

EMER  
DOG