



**Board of Adjustment  
July 14, 2020**

**Staff Report**

**TO:** Board of Adjustment

**FROM:** Zachary D. Gordon, AICP – Planning Director

**SUBJECT: Case# BOA-2020-16: Variance – 2705 Kendallwood Ct., Cabarrus County Pin # 5602-34-3692**

**Request for variance from the provisions of Article 6, Section 6.4.19.3.7.1 Landscaping and Article 7, Section 7.4 Perimeter Landscaping of the Unified Development Ordinance (UDO) to allow construction of a 2-car garage within a designated buffer.**

**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, Brenton & Shannon Adam, is requesting a variance from Article 6, Section 6.4.19.3.7.1 Landscaping and Article 7, Section 7.4 Perimeter Landscaping of the Unified Development Ordinance, to be permitted to encroach into a 50’ buffer. As shown on the attached site plan, the property is encumbered by a 50’ buffer, (which includes a 25’ undisturbed buffer area) within which the applicant is proposing to construct a free-standing garage. The proposed garage would extend into the buffer by approximately 15’, but would be outside the required 25’ undisturbed buffer. The existing single-family structure is currently located within the 50’ buffer, (but outside the 25’ undisturbed buffer) approximately 1’ further into the buffer. The applicant purchased the home in 2015. The record plat for this property includes a note stating: “Encroachment into Buffer Authorized by Town of Kannapolis”. This note is in reference to the existing single-family home.

**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 applicant purchased their home in 2015 with the structure located within the 50' buffer. The proposed garage placement would be approximately in-line with the single-family structure encroachment.

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

The property is subject to a 50' buffer that constrains development of the property.

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

The applicant purchased the property with the existing structure located within the 50' buffer.

           **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.**

According to Section 7.4 of the UDO, the purposed of a perimeter buffer yard is to provide a transitional buffer between uses that may differ in development intensity and density; or provide a minimum buffer between uses of similar intensity and density. The applicant's property is adjacent to a residentially zoned and used lot, which is 250' away. The garage would be located outside the required 25' undisturbed buffer, but would encroach within the 50' buffer area at approximately the same depth of encroachment as the existing single-family home.

**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 does not oppose **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



**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: BRENTON + SHANNON ADAM Owner: → SAME

Address: 2705 KENDALLWOOD CT Address: \_\_\_\_\_

KANNAPOLIS, NC 28081 \_\_\_\_\_

Telephone: 704-918-5001 Telephone: \_\_\_\_\_

Email: BSADAM@BADAM.NET Email: \_\_\_\_\_

Legal relationship of applicant to property owner: SELF

Property Location/Address: 2705 KENDALLWOOD CT, KANNAPOLIS, NC 28081

Tax Parcel Number: 5602343692 Zoning District: \_\_\_\_\_ Acreage of Site: 0.37  
0000

Requesting Zoning (if applicable): \_\_\_\_\_

BRENTON ADAM  
Applicant Name (Print)

BRENTON ADAM  
Property Owner Name (Print)

[Signature] 6/11/2020  
Applicant Signature & Date

[Signature] 6/11/2020  
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(s), and one (1) copy of any required site plan for staff review must be submitted by the deadline. All fees are nonrefundable and help to cover administrative and notification costs.*

**For Staff Use Only:**

Filing Fee: \_\_\_\_\_

Receipt # \_\_\_\_\_

Application No.: \_\_\_\_\_

Date Submitted (Complete): \_\_\_\_\_



## APPLICATION FOR A VARIANCE

I, Brenton Adam, 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):

UDO 6.4.19.3.7.1 Landscaping + Buffering Requirements  
UDO 7.4 Perimeter Buffer Yards

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:

As Attached

### 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.)

Attached, page 11

**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.)

Attached, page 12

---

---

**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.)

Attached, page 15

---

---

**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.)

Attached, page 16

---

---

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

BRENTON ADAM  
Applicant Name (Print)

BRENTON ADAM  
Property Owner Name (Print)

 6/11/2020  
Applicant Signature & Date

 6/11/2020  
Property Owner Signature & Date

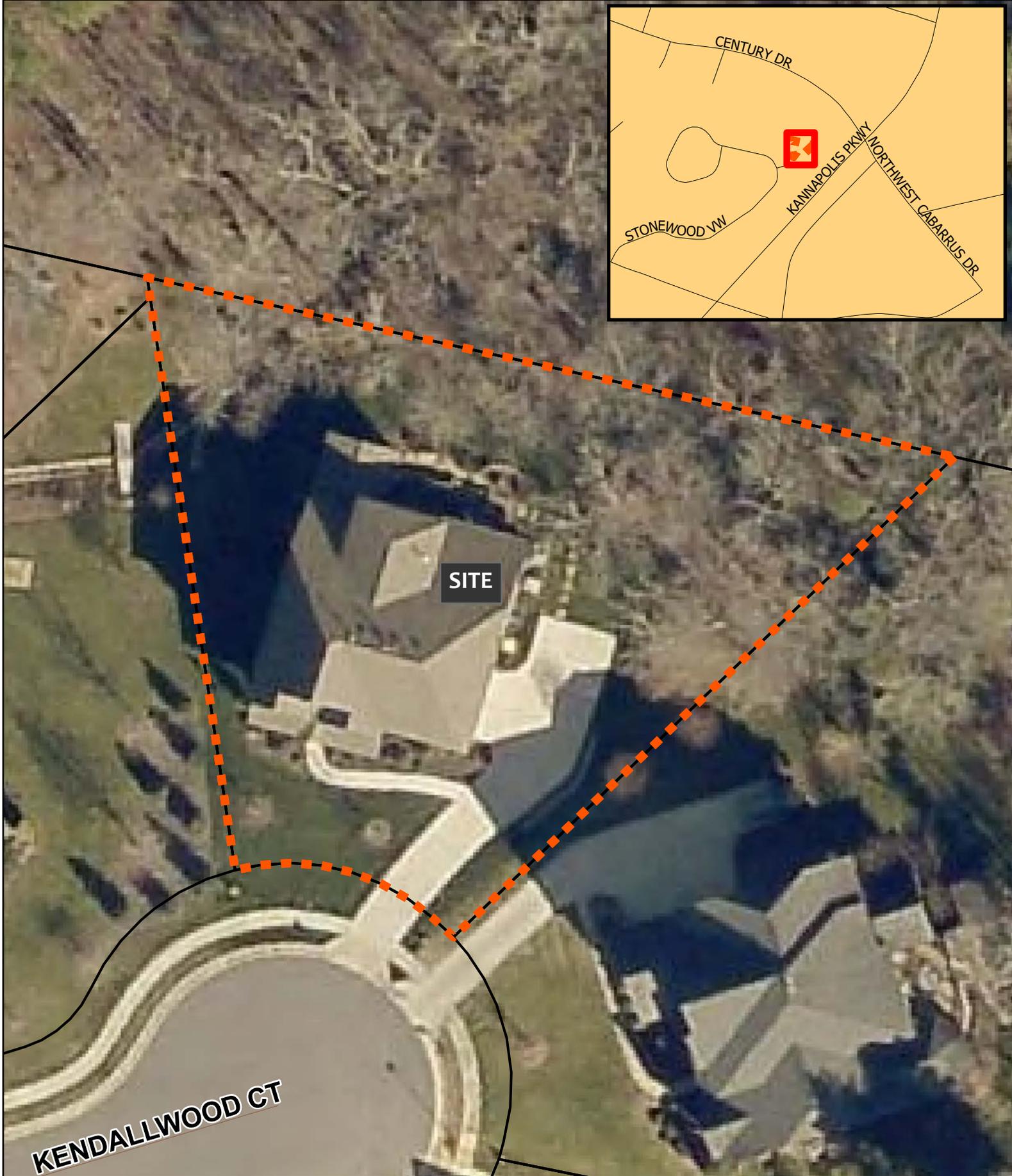
**Required as part of Conditional Use Permit Submittal:**

- ™** The Board of Adjustment may impose reasonable conditions upon the approval to ensure that the public health, safety and general welfare shall be protected, and substantial justice has been done.
- ™** Calls or conversation with Board of Adjustment members prior to the meeting may disqualify members from participation at the Board meeting. For 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 on the City's website to determine applicable fees. Fees are nonrefundable and help to cover administrative and notification costs.



# Vicinity Map

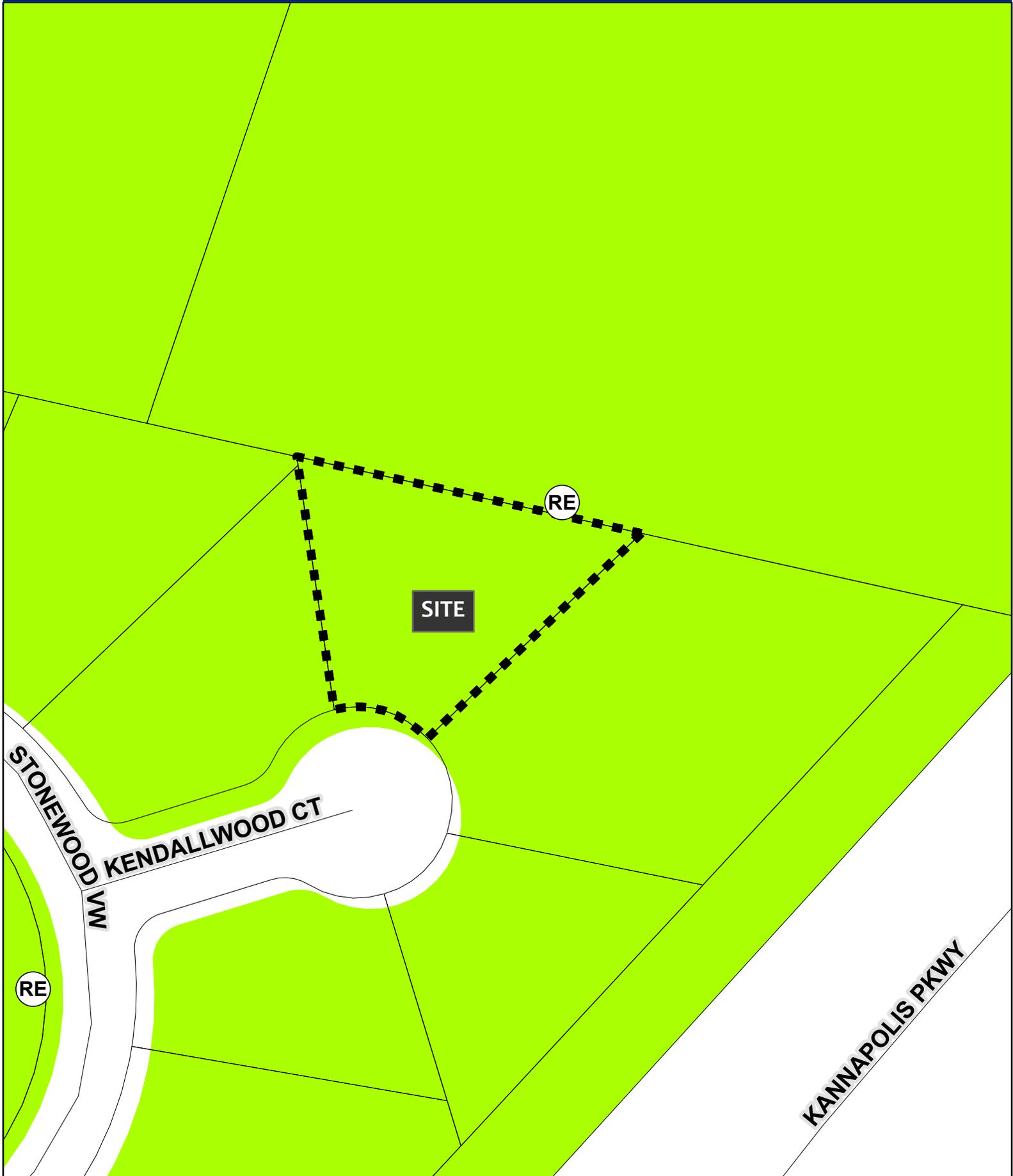
Case Number: BOA-2020-16  
Applicant: Brenton & Shannon Adam  
2705 Kendallwood Ct.





# Kannapolis Current Zoning

Case Number: BOA-2020-16  
Applicant: Brenton & Shannon Adam  
2705 Kendallwood Ct.

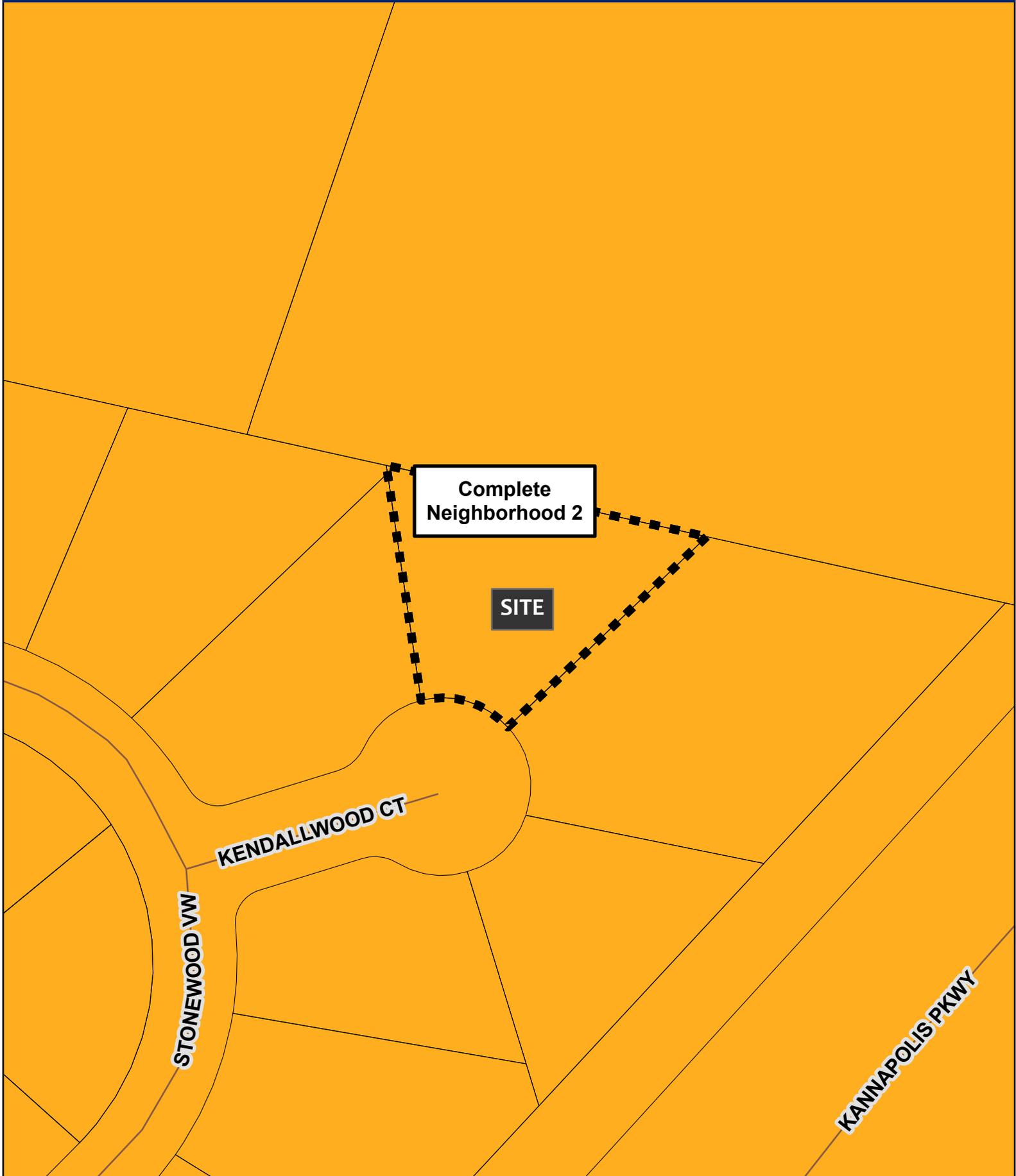




# Kannapolis 2030 Future Land Use Map



Case Number: BOA-2020-16  
Applicant: Brenton & Shannon Adam  
2705 Kendallwood Ct.



# 2705 Garage Project

Variance Request

2705 Kendallwood Ct, Kannapolis, NC 28081





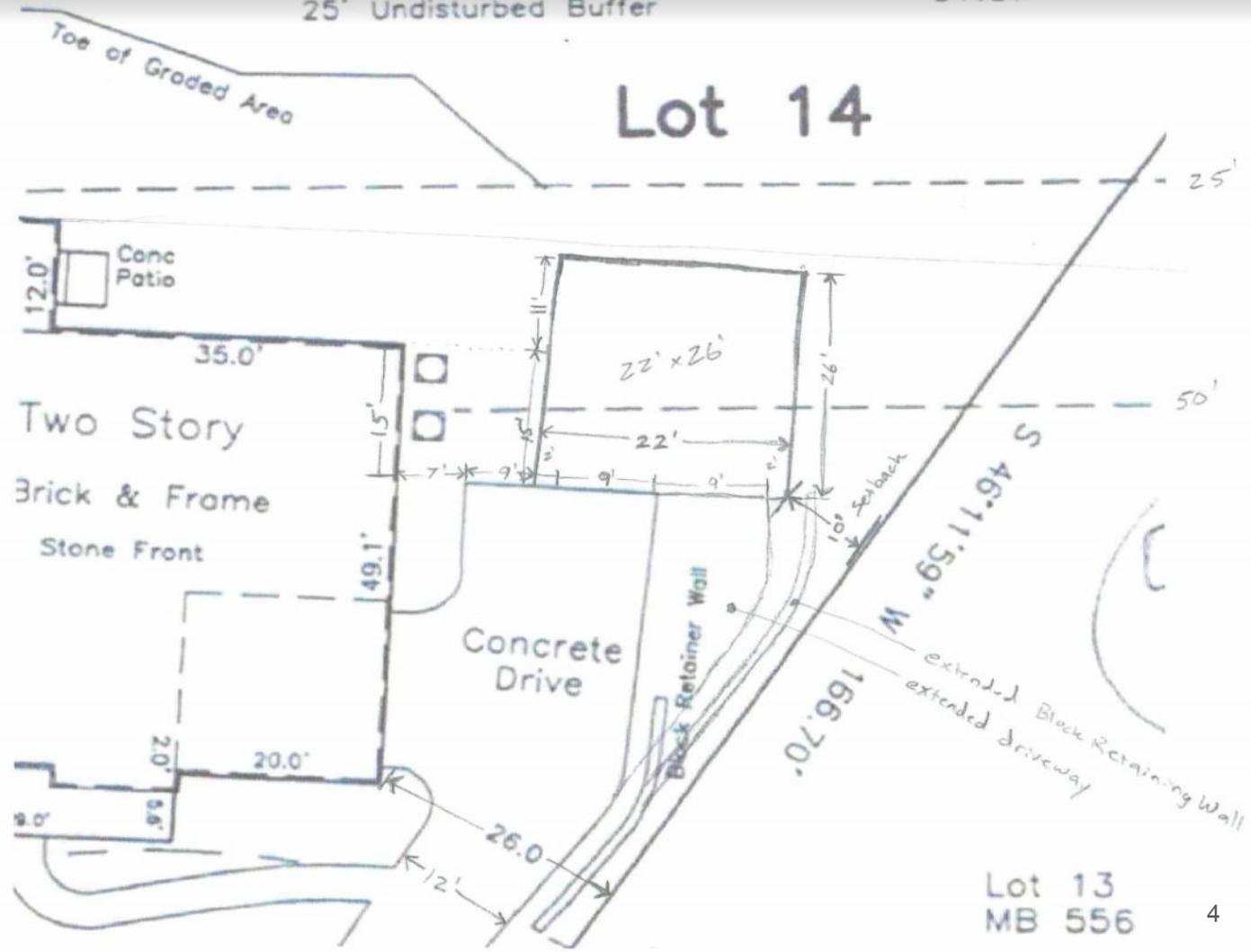
# Site Plan

22'x26' Garage

Abutted to end of driveway

Driveway widened

Retaining wall extended



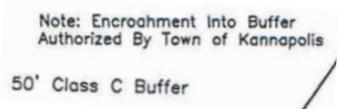
Lot 13  
MB 556

# Request

Back right corner of garage ~15' Encroachment into 50' buffer

- 1' less than existing back of home, but home is angled on property

Existing back of home ~24' Encroachment into 50' buffer

- Survey Note: A rectangular box containing the text: "Note: Encroachment into Buffer Authorized By Town of Kannapolis" and "50' Class C Buffer".
- Existing encroachment was negotiated by Ryland, when home was built
- Survey provided at home closing

# Photo

End of driveway  
where garage is to  
be built.

- Driveway  
widened 50%
- Retaining wall  
extended



# Photo

Note:

Home of rear  
abutting property  
very distant and  
not visible  
through wooded  
area

(purpose of the  
Class C buffer)



# Garage Design

Materials will match home

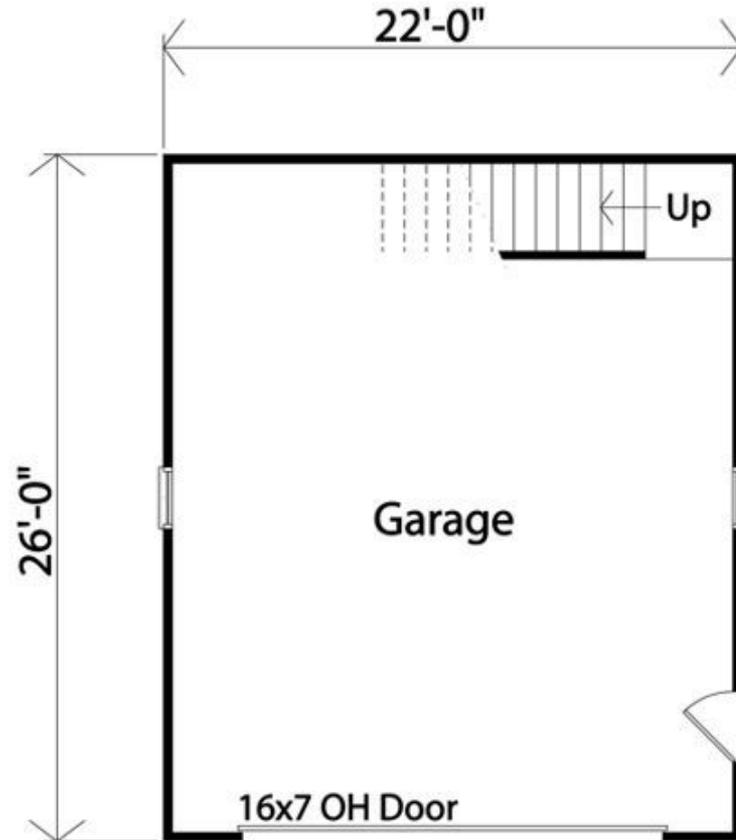
- i.e. brick, shake



# Dimensions

22' x 26' for 2 vehicles

Layout will be reversed



# Variance Application

## UDO Provisions:

- 6.4.19.3.7.1. A Class “C” Buffer yard pursuant to the Article 7 of this Ordinance shall be established around the entire perimeter of a Cluster Development and designated as either undisturbed, conservation easements or common open space on a subdivision plat.
  - 25’ was labeled as ‘Undisturbed Buffer’
  - 50’ was labeled as ‘Class “C” Buffer’
- 7.4. PERIMETER BUFFER YARDS. 7.4.1. PURPOSE. The purpose of perimeter buffer yards is to:
  - provide a transitional buffer between uses that may differ in development intensity and density;
  - or provide a minimum buffer between uses of similar intensity and density.

# Factors

## 1. Unnecessary hardship would result from the strict application of the ordinance

- a. Inability to use the property for a garage expansion to allow for much needed function of storage and space for family with teenagers soon to be driving would probably result in requiring us to sell our home
- b. Otherwise, we have intended to raise our family throughout their school years in this home
- c. Selling, moving and buying a home would incur significant unnecessary costs, simply due to the strict application of the ordinance whos spirit, purpose & intent can still be met with reasonable variance granted

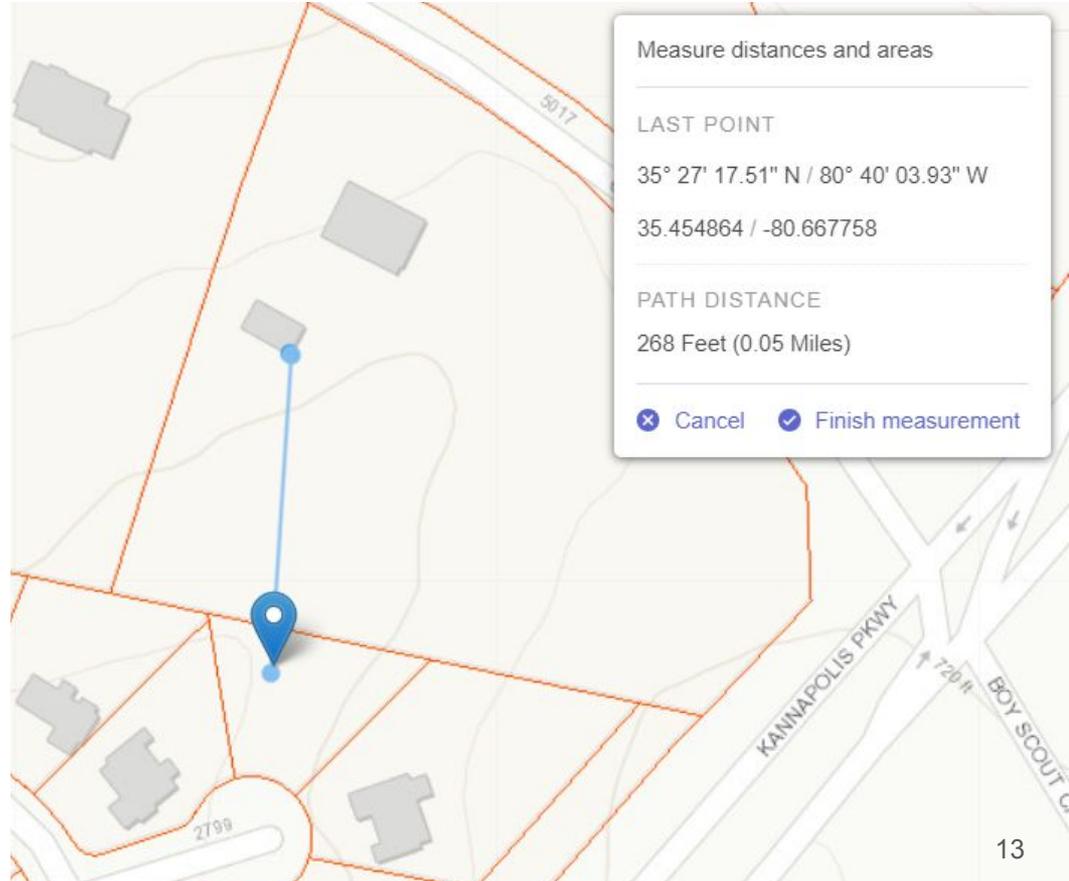
# Factors

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

- a. The wedge shape of our cul-de-sac lot, backed up against the Class “C” Buffer places a significant percentage of the property into this landscape buffer, unlike any other lot in this neighborhood.
- b. As well, complying with standard setbacks required the builder (Ryland Homes) to obtain approvals to encroach into the 50’ buffer, but stay out of a 25’ undisturbed buffer, as depicted on the survey provided to us at closing. They also added additional vegetation behind the home for compliance.

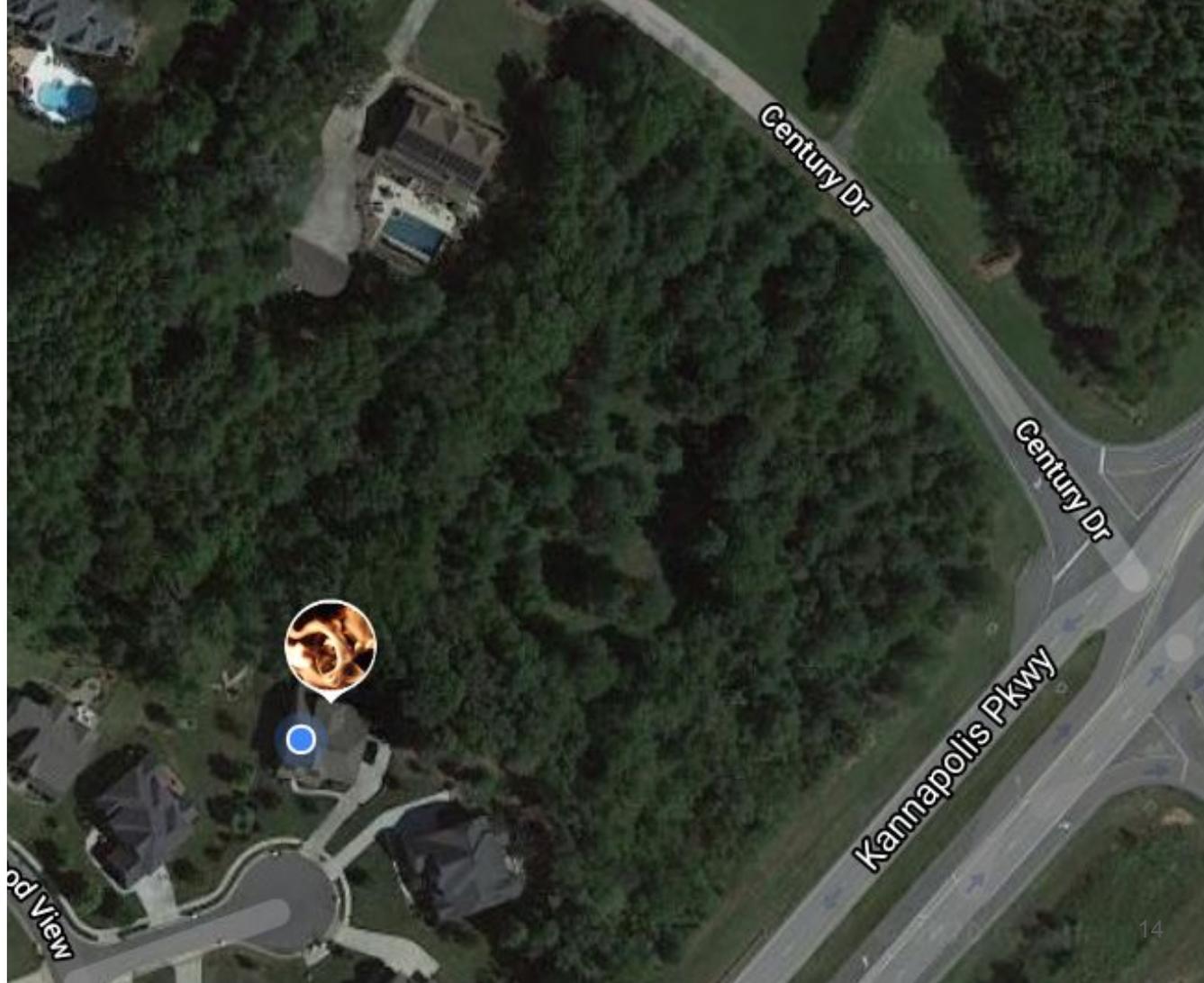
# GIS view

Map showing property and distance to rear neighbor exceeds 250'



# Aerial View

Significant vegetation  
buffer



# Factors

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

- a. The property was purchased from the builder, as configured today, with approximately 24' encroachment into the Class "C" Buffer.
- b. In early planning for this project, a preliminary request was solicited from the planning department and a voicemail confirms agreement
  - i. Aaron Tucker +1 planner, City of Kannapolis Planning Dept, 2016-07-22
  - ii. Established is was OK to encroach back into buffer
  - iii. "keep it 25' off the rear property line, you should be golden" [MP3](#)
- c. Current planning dept can't find same documentation or 25' buffer reference

# Factors

## 4. The requested Variance is consistent with the spirit, purpose, and intent of the ordinance

- a. The ordinance is designed to “provide a minimum buffer between uses of similar intensity and density”.
- b. In this case, a significantly larger than minimum buffer exists between homes with significant vegetation buffer available
- c. There is precedence of reasonable approval with the existing home encroachment
- d. Trinity Crest Homeowners Association Architectural Review Board has approved and supports the request.
- e. 7.4.4.E describes a Reduction in Required Perimeter Buffer Yard Permitted: the “net” perimeter buffer yard satisfies the minimum perimeter buffer yard requirements of this Section. The net buffer shall include the cumulative total for both required buffers.
  - i. While not directly applicable, it does show spirit, purpose & intent of ordinance

# Summary

Variance requested, consistent with existing precedent.

Unnecessary hardship, peculiar to the property, not by owner actions, consistent with spirit, purpose & intent.

Reasonable request with a heavy burden of compliance.

Average resident, homeowner, citizen, taxpayer trying to do the right thing, the right way, asking for a reasonable consideration.

Respectfully,

-Brent & Shannon Adam, 2705 Kendallwood Ct, Kannapolis, NC

<b>AcctName1</b>	<b>MailAddr1</b>	<b>MailCity</b>	<b>MailState</b>	<b>MailZipCod</b>
BENJAMIN & SARAH DECELLE	5001 CENTURY DR	KANNAPOLIS	NC	28081
TRINITY CREST OWNERS ASSOC INC				
C/O CEDAR MGMT GROUP	PO BOX 26844	CHARLOTTE	NC	28221
ANTHONY HONEYCUTT	5031 CENTURY DR	KANNAPOLIS	NC	28081
ARUN & LEKSHMY VARMA	2704 KENDALWOOD CT	KANNAPOLIS	NC	28081
BRENTON & SHANNON ADAM	2705 KENDALLWOOD CT	KANNAPOLIS	NC	28081
HASSAN & ANGELIA NUNN	2658 STONEWOOD VW	KANNAPOLIS	NC	28081
JEFFREY & CHRISTINE SPIEGEL	2643 STONEWOOD VW	KANNAPOLIS	NC	28081
MICHAEL & KIM DIEP	2708 KENDALLWOOD CT	KANNAPOLIS	NC	28081
JEREMY & SHELLY EWERSMANN	2650 STONEWOOD VW	KANNAPOLIS	NC	28081
JOHANNES & CHELSEA DREYER	2646 STONEWOOD VW	KANNAPOLIS	NC	28081
EUNICE PARK	2662 STONEWOOD VW	KANNAPOLIS	NC	28081
MICHAEL & JEANINE HUNT	2654 STONE WOOD VIEW	KANNAPOLIS	NC	28081
RYAN & MAKALYA THROWER	2655 STONEWOOD VW	KANNAPOLIS	NC	28081



KANNAPOLIS  
Planning

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-2020-16 - Variance – 2705 Kendalwood Ct.**

This public hearing is to consider a request for a variance from Article 6, Section 6.4.19.3.7.1 Landscaping and Article 7, Section 7.4 Perimeter Landscaping of the Unified Development Ordinance. The applicant is requesting a variance from the buffering and landscaping requirements to allow for construction of a 2-car garage. The subject property is located at 2705 Kendalwood Ct., measures approximately .37 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Numbers 5602-34-3692. **(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. You are invited to attend this meeting and provide any testimony relevant to the proposed variance request.**

**NOTE: IN ORDER TO COMPLY WITH FEDERAL, STATE AND LOCAL RESTRICTIONS IMPOSED IN RESPONSE TO THE COVID-19 VIRUS, SOCIAL DISTANCING PRACTICES WILL BE OSERVED 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,



Zachary D. Gordon, AICP  
Planning Director

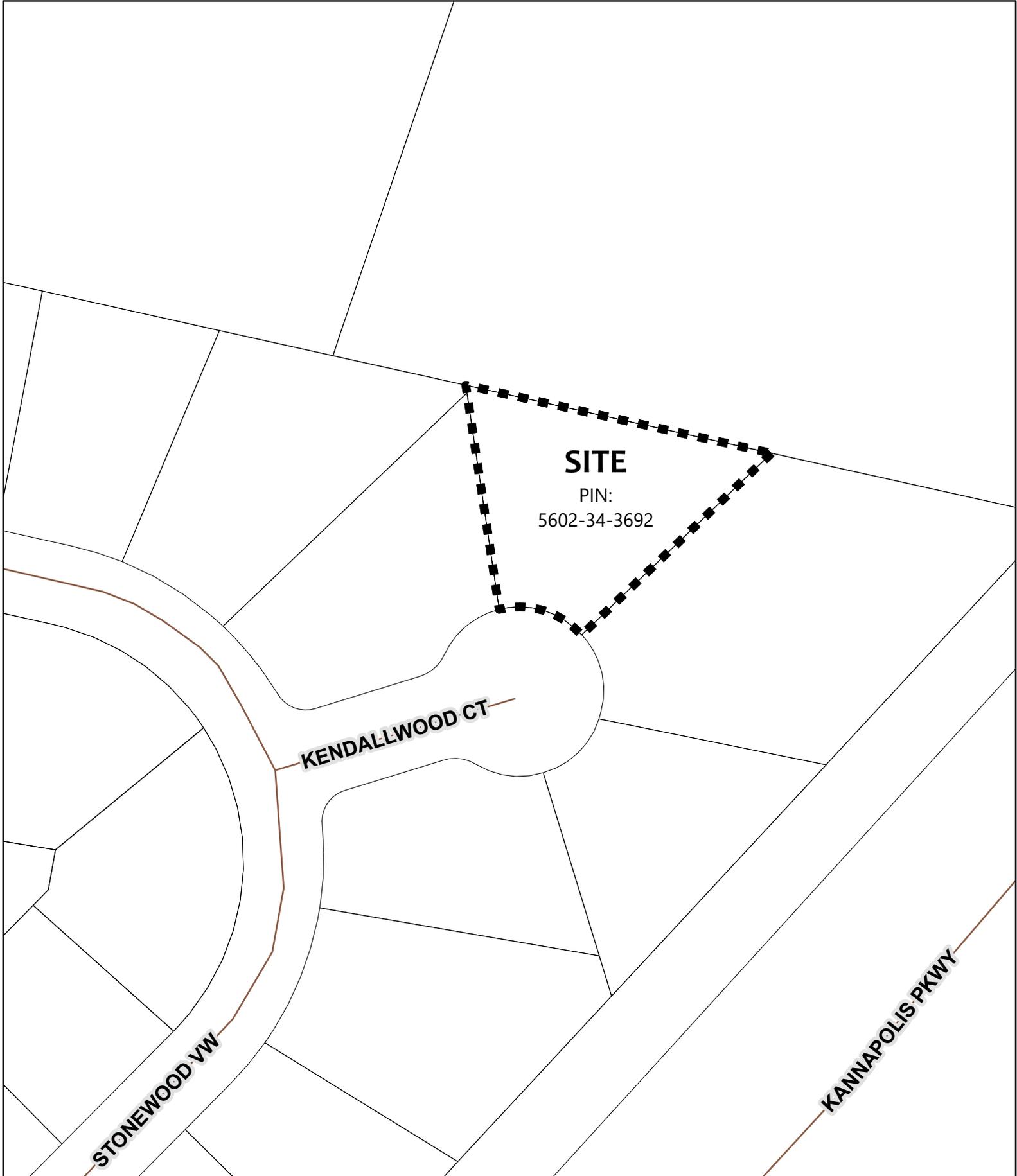
Enclosure

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



# Variance

Case Number: BOA-2020-16  
Applicant: Brenton & Shannon Adam  
2705 Kendallwood Ct.





BOARD OF  
ADJUSTMENT  
PUBLIC HEARING  
INFORMATION  
CALL: 704-330-4510  
CASE #15-002-18

2765