

1 **CITY OF KANNAPOLIS, NC**
2 **BOARD OF ADJUSTMENT**

3
4 **Minutes of Special Meeting**
5 **Tuesday September 6, 2022**
6

7 The Board of Adjustment met on Tuesday September 6, 2022 at 6:00 PM at City Hall, 401 Laureate Way,
8 Kannapolis, North Carolina.
9

10 **Board Members Present:** Ryan French, Chair
11 Cyrus Rattler
12 Daisy Malit
13 Holden Sides
14 Wilfred Bailey, Sr.
15 Danielle Martini, Alternate Member
16

17 **Board Members Absent:** Emily Joshi, Vice Chair
18

19 **Staff Present:** Richard Smith, Planning Director
20 Boyd Staney, Assistant Planning Director
21 Wilmer Melton, Assistant City Manager
22 Eddie Smith, Deputy City Manager
23 Kristin Jones, Assistant to the City Manager
24 Pam Scaggs, Recording Secretary
25

26 **City Attorney:** Walter M. Safrit III
27

28 **Visitors Present:** Cheryl Moncure Grady Christie
29 Barry Lambert Jaren Dullum
30 Nancy Rutledge Jim Rutledge
31 Shelly Stein Jesse Robinson
32 Ziba Robinson Evelyn Worthy
33

34 **CALL TO ORDER**

35 Chair Ryan French called the meeting to order at 6:00pm. He asked for an additional 10 minutes to allow
36 Board members time to arrive.
37

38 **OATH OF OFFICE**

39 Recording Secretary administered the Oath of Office for the reappointment of Daisy Malit to a second term.
40

41 **ROLL CALL AND RECOGNITION OF QUORUM**

42 Recording Secretary Pam Scaggs called the roll and presence of a quorum was recognized.
43

44 **APPROVAL OF AGENDA**

45 Chair French asked for a motion to approve the Agenda, which was made by Mr. Sides, second by Mr.
46 Bailey and the motion was unanimously approved.
47

48 **APPROVAL OF MINUTES**

49 Chair French asked for a motion to approve the June 7, 2022 meeting minutes which was made by Ms.
50 Malit, second by Mr. Rattler, and the motion was unanimously approved.
51

1 **PUBLIC HEARING**

2
3 **SWORN IN FOR TESTIMONY**

4 Boyd Stanley, Barry Lambert, Cheryl Moncure, Grady Christie, James Rutledge, Jesse Robinson and
5 Richard Odom.

6
7 **BOA-2022-11 – Request for a Special Use Permit for unaddressed property located on the corner of**
8 **West 16th Street and North Main Street to allow a 6-unit townhome development in the General**
9 **Commercial (GC) zoning district.**

10 Assistant Planning Director Boyd Stanley gave a presentation regarding a request for a Special Use Permit
11 (SUP) for BOA-2022-11, attached to and made part of these minutes as Exhibit 1. Mr. Stanley noted the
12 applicant, property owners, address, size, and the current zoning and that the request is to allow a 6-unit
13 townhome development.

14
15 Mr. Stanley directed the Board’s attention to the Vicinity, Zoning and Future Land Use map, and the
16 conceptual site plan. He reiterated that the applicant is proposing to develop six (6) townhome units fronting
17 North Main Street, that will be “rear-loading” with a sidewalk to, and along N. Main Street. Mr. Stanley
18 directed the Board’s attention to a rendering as well as site photos and talked about the need for a sidewalk
19 in the area. He reviewed Policy Issues and staff Findings of Fact as follows:

- 20
21 **1. The proposed use will be in harmony with the area in which it is to be located and in**
22 **general conformance with the City’s Land Use Plan.**

23 This property is in the “Urban Corridor” Character Area in the *Move Kannapolis Forward*
24 *2030 Comprehensive Plan.*

25
26 The Urban Corridor Character Area includes activity corridors with places to live, work, and
27 shop in a walkable configuration. The Area may include both vertically and horizontally
28 mixed uses, however infill development will be vertically mixed, with ground floor retail and
29 offices and housing on upper floors. These developments are located close together and near
30 the street, providing connections to surrounding development.

31
32 Based on the character areas noted above, the proposed development is compatible with the
33 future and existing uses in the surrounding area.

- 34
35 **2. Adequate measures shall be taken to provide ingress and egress so designed as to**
36 **minimize traffic hazards and to minimize traffic congestion on the public roads.**

37 The townhomes shall have individual driveway access from a residential public alley located
38 along the rear of the property that is also to be used as a secondary Fire Department access for
39 the units.

- 40
41 **3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor,**
42 **dust, smoke or gas.**

43 No vibration, noise, odor, dust, smoke, or gas beyond what is normal for a single-family use
44 is expected as a result of the development of this property.

- 45
46 **4. The establishment of the proposed use shall not impede the orderly development and**
47 **improvement of surrounding property for uses permitted within the zoning district.**

48 The proposed use would not impede development of the surrounding properties for uses
49 allowed within their respective zoning districts.

1 **5. The establishment, maintenance, or operation of the proposed use shall not be**
2 **detrimental to or endanger the public health, safety, or general welfare.**

3 There is no apparent danger or detriment to the overall public safety, health and welfare
4 resulting from the proposed use.
5

6 **6. Compliance with any other applicable Sections of this Ordinance.**

7 The proposed use shall comply with all sections of the City of Kannapolis Development
8 Ordinance, conditions of approval, and any other applicable local, state, and Federal
9 regulations. It is understood by the applicant that unless specifically relieved of a requirement,
10 in writing, all KDO requirements, including compliance with the Technical Review
11 Committee site plan review and approval process, must be met. Sewer service is subject to
12 allocation based upon sewer treatment capacity.
13

14 Mr. Stanley reminded the Board of the actions requested, and directed the Board’s attention to the Staff
15 Report as he read condition No.’s 1, 4 & 8 into the record:
16

- 17 1. The permitted uses allowed by this SUP shall only include six (6) townhome units.
- 18 4. The developer will construct curb, gutter and sidewalk along the entire road frontage where
19 development has access and/or street frontage. The improvements will be constructed to City
20 standards.
- 21 8. Sanitary sewer service is subject to allocation based upon sewer treatment capacity.
22

23 Mr. Stanley concluded his presentation and made himself available for questions.
24

25 Chair French directed attention to the aerial photo of the subject property and asked about ingress/egress
26 into the site. Mr. Stanley responded that staff asked the applicant to push the single access as far back along
27 W 16th Street as was possible so as not to interfere with the intersection at N. Main Street and there will not
28 be any access points along N. Main Street.
29

30 The applicant, Jesse Robinson, talked about the design of the development to complement the downtown
31 area. Mr. Robinson added that he has other developments in the City and made himself available for
32 questions.
33

34 Chair French and the number of buildings. Mr. Robinson responded that he is proposing two (2) buildings,
35 each with three (3) units.
36

37 City Attorney, Wally Safrit, asked about parking, whether the units will provide a garage and the number
38 of cars that could be accommodated. Mr. Robinson responded that this style of townhome can be built with
39 either front or rear loaded, and that the City required that they be rear-loading units due to the size of the
40 property and to mitigate traffic impacts along N. Main Street. He added that the units will provide a garage
41 and a parking pad which will accommodate two (2) vehicles per unit and keep the “alley” clear in the event
42 of an emergency.
43

44 Mr. Bailey asked for confirmation that the garage will only hold one (1) car and whether the residents
45 understand that the alley is not for parking. Mr. Robinson confirmed the size of the garage and added that
46 the parking pad will be able to accommodate 1-1/2 to 2 cars, depending on the size of the vehicle and that
47 the residents will be made aware of parking requirements.
48

1 Mr. Rattler asked about access for trash services. Mr. Robinson indicated that the neighborhood leaves trash
2 receptacles along W 16th Street and that he intends to construct a general area for trash collection to be
3 located towards the back of the property along W. 16th Street.

4
5 Chair French asked if the units will be for rent or sale. Mr. Robinson responded that they will be for sale.

6
7 Mr. Bailey asked when construction will begin. Mr. Robinson responded, “as soon as possible”.

8
9 Ms. Martini asked about visitor parking. Mr. Robinson responded that visitors could utilize the parking pad.

10
11 Mr. Rattler asked about the number of bedrooms and the square footage. Mr. Robinson responded that they
12 will be three-bedroom, two-bath units and approximately 1400 square feet.

13
14 Mr. Bailey expressed concern regarding lack of parking. Mr. Robinson responded that there is space
15 between the buildings that could accommodate additional parking, but they also have to provide a certain
16 amount of green space. Mr. Stanley added that the applicants are exceeding KDO requirements for parking.

17
18 There being no additional questions or comments for staff or the applicant, Chair French opened the Public
19 Hearing.

20
21 Richard Odom, resident living at 101 W 16th Street, stated that his property is located directly behind the
22 subject property. Mr. Odom expressed concerns regarding parking, traffic impacts, size of the property,
23 trash collection, and stormwater runoff. He added that he has lived in the neighborhood for over 40 years
24 and suggested that there are gas and/or oil tanks underground from when the property was used as a gas
25 station. Mr. Odom indicated that he would be calling the EPA (Environmental Protection Agency) to ensure
26 that the property is clean.

27
28 Mr. Bailey asked staff if there are gas and/or oil drums buried as indicated by Mr. Odom. The applicant
29 noted that he could respond so staff deferred to Mr. Robinson, and he confirmed that the property was
30 previously used as a gas station and that the EPA cleared the property approximately 2 years previous. Mr.
31 Robinson added that in addition to meeting EPA standards, they also have to meet construction and erosion
32 control standards which has been approved by the EPA. Mr. Bailey noted that underground storage of tanks
33 was not mentioned in the staff report and wanted to make sure that he was aware of the information. Mr.
34 Robinson confirmed that he was aware of the previous use and that the EPA has cleaned the property. Mr.
35 Bailey asked if there are flood issues on the property. Mr. Robinson responded that there is a water egress
36 ditch separating the subject property from Mr. Odom’s property. [Indistinct conversation between Mr.
37 Robinson and Mr. Odom.]

38
39 Mr. Safrit asked if a “Phase 1 Environmental” inspection had been completed on the property. Mr. Robinson
40 responded that a Phase 1 had been completed and approved by the EPA. Mr. Safrit clarified that a Phase 1
41 inspection can be completed by an engineer and asked if Mr. Robinson had completed an inspection of the
42 property to see if a UST (Underground Storage Tank) was present and if he has documents stating whether
43 a UST had been removed. Mr. Robinson responded that a Phase 1 had been completed and that he has the
44 final close out documents from the EPA clearing the site. Mr. Safrit asked how staff monitors sites that may
45 have environmental issues. Planning Director, Richard Smith, responded that the City does not normally
46 require an applicant to provide proof that a Phase 1 Environmental inspection with EPA approval has been
47 completed but the Board could add that as a condition of approval to this SUP request. Mr. Safrit advised
48 that the Board should add as a condition of approval.

1 Mr. Rattler asked the width of the alley. Mr. Robinson responded that he is not sure the width of the alley
2 but that it meets Fire Department standard codes. Mr. Rattler recognized that it may meet minimum code
3 requirements but clarified that the Board's responsibility in determining the accuracy of staff's findings of
4 fact is if it minimizes traffic hazards and questioned whether one-lane of traffic will impact property owners
5 from being able to access their homes. Mr. Stanley clarified that the alley meets minimum standards for
6 two-way traffic which is between 20 and 24 feet.
7

8 Mr. Safrit asked for clarification regarding garbage collection and location of the pick-up area. Mr.
9 Robinson responded that he is proposing a general area to the rear of the property along W 16th Street that
10 will consist of a three-wall concrete area for residents to leave trash receptacles on pick-up day and utilized
11 the site plan to illustrate the proposed location. Chair French asked if residents will have to roll their
12 receptacles to W 16th Street or if Waste Management will be accessing the site via the alley. Mr. Robinson
13 responded that Waste Management currently services W 16th Street so assumed that receptacles will be
14 taken to the street for pick-up but added that he has not confirmed this with Waste Management. Mr. Safrit
15 asked Assistant City Manager, Wilmer Melton, if he would advise the best practice for garbage collection
16 at this site. Mr. Melton, indicated that the receptacles will need to be taken to the street, adding that if the
17 alley is a private drive, Waste Management will not utilize private drives. Mr. Melton cautioned that there
18 will be days where recycling, bulk service and yard waste will need to be collected and that all should be
19 brought to W 16th St. along property line. There was additional conversation regarding the best location
20 for trash receptacles and expressed concern regarding traffic impacts. Mr. Robinson stated that he is open
21 to working with Waste Management for the best pick-up location to mitigate traffic impacts.
22

23 There being no additional questions or comments, Chair French closed the Public Hearing.
24

25 Chair French asked for a motion to accept the City's exhibits, including the staff report into the record
26 which was made by Mr. Sides, second by Ms. Malit and the motion was unanimously approved.
27

28 Chair French asked for a motion to approve or revise the Findings of Fact. Mr. Rattler made the motion to
29 revise the Findings of Fact. Mr. Safrit asked for the specific finding that Mr. Rattler would like to revise.
30 Mr. Rattler directed attention to Finding No. 2, stating that the ingress/egress is too close to N. Main Street
31 as well as location of trash receptacles and does not feel that adequate measures have been taken to mitigate
32 traffic impacts. Mr. Bailey reminded the Board regarding the EPA findings. Mr. Safrit responded that the
33 Board could add a condition regarding the EPA findings but that if the Board agrees that Finding No. 2 has
34 not been met, that they should also deny approval of the SUP. Mr. Smith indicated that in addition to the
35 condition regarding EPA approval, the Board could also add a condition regarding the location of garbage
36 receptacles. Mr. Rattler asked who would enforce the location of trash receptacles. Mr. Smith responded
37 that staff, in coordination with Waste Management, would enforce the location. Mr. Safrit interjected that
38 if the Board does not agree with Finding No. 2, then the SUP should be denied. Mr. Smith countered that
39 the Board could add the condition regarding location of trash receptacles to meet the Finding. Mr. Rattler
40 clarified that in addition to the concern regarding location of trash receptacles, he also has concern regarding
41 the number of units sharing one alley for ingress/egress and its proximity to N. Main Street. Mr. Safrit asked
42 Mr. Smith if this project will receive adequate infrastructure and if the Technical Review Committee (TRC)
43 will review this project. Mr. Smith confirmed. There was additional discussion regarding ingress/egress to
44 the site.
45

46 Chair French reminded the Board that there was motion made by Mr. Rattler to revise Finding of Fact No.
47 2 regarding egress/ingress and trash collection and asked for a second, which was made by Mr. Bailey. The
48 motion failed 2-4 with Chair French, Mr. Sides, Ms. Malit and Ms. Martini casting the dissenting votes.
49

1 Mr. Safrit clarified that he will modify Finding No. 2 to show that TRC will review and advise regarding
2 egress/ingress; and that he will add a condition of approval regarding location of trash receptacles.
3

4 Chair French asked for a motion to table the case until the October 4, 2022 meeting which was made by
5 Mr. Rattler, second by Mr. Bailey and approved by unanimous vote.
6

7 **BOA-2022-13 – Request for a Variance from the side yard setback requirement for property located**
8 **at 495 Kansas.**

9 Assistant Planning Director Boyd Stanley gave a presentation regarding a request for a Variance BOA-
10 2022-13, attached to and made part of these minutes as Exhibit 2. Mr. Stanley provided the application
11 details noting the applicant, property owners, address, size, and the current zoning. He noted that the
12 majority of the property is located in both the 100-year and 500-year floodplain, and that the applicant is
13 requesting a variance from the side yard setback. .
14

15 Mr. Stanley directed the Board’s attention to the Vicinity, Zoning and Future Land Use map as well as the
16 site plan. He noted that the home sitting on the subject property was recently constructed. Mr. Stanley
17 directed the Board’s attention to site photos, illustrated location of the floodplain area and the location of
18 the required variance. Mr. Rattler asked when the house was constructed. Mr. Stanley responded that he
19 does not know the date but that it was recent and is a newly constructed house. Mr. Bailey asked if the
20 house was constructed knowing that it was out of compliance. Mr. Stanley deferred to the applicant but
21 stated that he did not believe that the applicant knowingly built the house within the setback but that they
22 were trying to push it as far as they could to be out of the floodplain area. He added that a survey was
23 recently completed and that is when it was discovered that the house encroached into the setback. Chair
24 French asked for confirmation that it is just the front, right corner of the house that is encroaching 1.1 feet
25 into the setback. Mr. Stanley utilized site photos of the home and confirmed.
26

27 Mr. Stanley stated that Staff reviewed Policy Issues and staff Findings of Fact as follows:
28

- 29 1. **Unnecessary hardship would result from the strict application of the ordinance.**
30 The hardship is a result of the existing lot of record restricting the placement of a single-
31 family home. Without the requested variance, the newly constructed house would not be in
32 conformity as constructed due to the existing floodplain area.
33
- 34 2. **The hardship results from conditions that are peculiar to the property, such as**
35 **location, size, or topography.**
36 Both the existing topography and floodplain conditions on the subject property present a
37 hardship to make reasonable use of the property under the current zoning.
38
- 39 3. **The hardship did not result from actions taken by the applicant or the property owner.**
40 No actions were taken by the applicant or the property owner that affected the topography of
41 the land or floodplain.
42
- 43 4. **The requested variance is consistent with the spirit, purpose, and intent of the ordinance,**
44 **such that public safety is secured, and substantial justice is achieved and will preserve**
45 **its spirit.**
46 The requested variance is consistent with the spirit, purpose, and intent of the KDO. The
47 variance will bring the new home into conformance, eliminate the encroachment, and prevent
48 any future litigation between future property owners.
49

1 Mr. Stanley reminded the Board of the actions requested, concluded his presentation and made himself
2 available for questions. Mr. Stanley noted that a permit was issued for construction of the home showing a
3 10-foot side yard setback.
4

5 Representative for the applicant, Jim Rutledge, stated that he built the house, is the owner of the property
6 and has owned lot for 40 years. Mr. Rutledge stated that his company has built over 900 homes in the
7 Kannapolis area and that this home was not an easy fit because 3-Mile Branch creek runs along the property.
8 He talked about stormwater issues that impacted the bridge on Dakota Street and suggested that when the
9 bridge was repaired, additional or larger drainage pipes were installed that mitigated flooding in the area.
10 Mr. Rutledge stated that he obtained a survey from Alley, Williams, Carmen and King that showed a
11 reduced floodplain on the lot that would allow construction of a home to one side of the lot. He added that
12 they obtained a topography survey from Mel Thompson that determined the grade at which the home would
13 need to be constructed to stay above the flood level and an additional survey after the home was constructed
14 and that is when it was discovered that the front right corner of the house sits 13 to 14 inches into the 10-
15 foot setback requirement. Mr. Rutledge clarified that the front-right corner is the only portion of the house
16 that encroaches into the setback. He indicated that the property was sold under a VA loan with the
17 agreement that Mr. Rutledge would obtain the variance for the encroachment.
18

19 Mr. Bailey noted that there has been a lot of rain and asked if there is flooding on property due to rain. Mr.
20 Rutledge responded that the lot has been graded and did not have the appearance of any flooding.
21

22 Mr. Safrit presented a different scenario where a property owner asked for a variance on property with
23 similar limitations prior to construction of the home and asked if they would grant the variance. He noted
24 that a variance requires a 4/5 affirmative vote to approve variance.
25

26 Mr. Rutledge also asked the Board to consider other zoning districts in the City where the required setback
27 is less than 10-feet.
28

29 Mr. Safrit asked Mr. Rutledge if they attempted to contact the adjacent property owner to acquire a portion
30 of their parcel to rectify the issue. Mr. Rutledge responded that they made several attempts to contact the
31 property owner but were unsuccessful. He deferred to his daughter, Shelly Stein.
32

33 **SWORN IN FOR TESTIMONY**

34 Shelly Stein
35

36 Representative for the applicant, Shelly Stein, stated that the adjacent property is owned by an LLC and
37 that while it was difficult to obtain contact information, was finally able to speak with them, sent the survey
38 so that they could see the issue and after several attempts by phone, email and text messages, received no
39 response so assumed that they were not interested in selling a portion of their property. She added that they
40 obtained soil reports and utilized specific foundation materials due to those reports, constructed a smaller
41 home (900 sf) due to the limitation of the parcel but unfortunately the right-front corner of the home was
42 built 13 inches into the setback. Ms. Stein also noted that after the Elevation Certificate was obtained, they
43 realized that they are actually 20-feet outside of the floodplain. Mr. Rutledge added that the VA did not
44 object to the floodplain area.
45

46 Mr. Bailey reiterated Mr. Safrit's question regarding purchasing property from the adjacent property owner.
47 Ms. Stein repeated that they had made several attempts to contact the adjacent property owner, and were
48 willing to purchase property, but was unsuccessful in getting a response. She added that the property was
49 under contract and that the closing had already been extended so that they could contact the adjacent

1 property owner. She said the closing could only be extended one time so they did not have any other option
2 but to apply for the variance. Ms. Stein suggested that the encroachment was discovered only by chance.

3
4 Mr. Bailey made the comment, “it’s easier to ask for forgiveness rather than permission”. Mr. Safrit
5 suggested that perhaps Mr. Bailey is implying that the applicant intentionally encroached into the setback.
6 Mr. Rutledge responded that the error was discovered only after a survey was completed and that while he
7 accepts responsibility for the error, because they did push the house to the side as far as they could in an
8 effort to stay out of the floodplain, they did not intentionally build the home in the setback.

9
10 There being no additional questions or comments for staff or the applicant, Chair French opened the Public
11 Hearing.

12
13 Grady Christie, 603 Breckenridge Road, stated that he lives directly behind the subject property and that he
14 experiences flooding on his property any time there is a significant amount of rain. Mr. Christie stated that
15 he bought his home in 2019, that the issue has gotten worse over time and that he has filed several
16 complaints to the City regarding the flooding. He submitted several pictures into the record, illustrating
17 flooding issues on his property and reiterated that he has filed several complaints regarding the flooding
18 and requested copies of reports but was informed that it required a written request. Mr. Christie directed
19 the Board’s attention to additional neighborhood pictures further illustrating the flooding issues, as well as
20 to the variance application and expressed concern that a retaining wall will be constructed on the subject
21 property to prevent flooding and asked that no retaining wall be allowed to be constructed in the floodplain.

22
23 Mr. Rattler indicated that he did not understand how the flooding issue on Breckenridge Road was increased
24 due to construction of a house on Kansas Street and suggested that they are separate issues. Mr. Grady
25 stated that he wanted to bring attention of the stormwater issues as well as flooding of the creek to the
26 Board.

27
28 Chair French asked staff if the applicant proposed construction of a retaining wall in the floodplain. Mr.
29 Stanley replied that there is no proposed containment wall. Chair French stated that while he appreciated
30 Mr. Christie bringing attention to both issues, he did not believe there was relevance to the requested
31 variance.

32
33 Cheryl Moncure, 607 Breckenridge Road, stated that if the Board approves the variance request, she asked
34 that they do so with a condition that no structure be constructed within the stormwater drainage ditch. Ms.
35 Moncure expressed additional concern regarding the stormwater runoff and flooding in the neighborhood,
36 stating that she owns property on both sides of the drainage ditch and that her yard was eroding. She stated
37 that she personally installed three pallets of rock in the ditch, stating that it is 7-8 feet deep and 10-feet
38 wide, and has been successful at slowing the flow of the water but she still experiences significant issues
39 with flooding. Ms. Moncure stated that her husband and another neighbor are veterans and are familiar with
40 the requirements of obtaining a VA loan and asked that the Board consider that she spent over \$6,000 trying
41 to save her yard and reiterated that a condition be added preventing construction of any structure in the
42 stormwater ditch.

43
44 Mr. Safrit stated that one of his responsibilities is to protect the record and that relevance is often an issue.
45 He added that if the house on Kansas Street had been built within the setbacks, the flooding issues would
46 still exist. Mr. Safrit stated that he does not see the relevance to the variance request and asked that the
47 Board not to consider Mr. Christie nor Ms. Moncure’s testimony with regards to consideration of the
48 variance request and that conditions cannot be placed on variance requests. Ms. Moncure directed the
49 Board’s attention to page 2 of the variance application (see Exhibit 2) stating that the applicant wrote that
50 a structure would be built in the flood zone. Chair French reviewed the application and stated that the

1 structure being referred to on the application is the home that was constructed 13 inches into the side yard
2 setback in error by the construction company.

3
4 Barry Lambert, 601 Breckenridge Road, asked how the encroachment affects his property. Mr. Lambert
5 indicated that he received a letter from the City stating that he needed to attend the meeting and discuss the
6 variance. Mr. Stanley responded that state law requires that adjacent property owners be notified of Public
7 Hearings. Mr. Smith clarified that letter does not require property owners to attend the meeting, it is just
8 notice of the meeting.

9
10 There being no additional questions or comments, Chair French closed the Public Hearing.

11
12 Chair French asked for a motion to accept the City's exhibits, including the staff report into the record
13 which was made by Mr. Sides, second by Ms. Malit and the motion was unanimously approved.

14
15 Chair French asked for a motion to approve or revise the Findings of Fact. Ms. Malit made the motion to
16 approve the Findings of Fact, second by Mr. Sides and the motion was unanimously approved.

17
18 Chair French asked for a motion to approve, approve with conditions, or deny the issuance of the Variance.
19 Mr. Sides made the motion to approve, second by Ms. Martini and the motion was unanimously approved.

20
21 Chair French asked for a motion to issue the Order of Approval which was made by Ms. Malit, second by
22 Ms. Martini and the motion was unanimously approved.

23
24 **PLANNING DIRECTOR UPDATE**

25 Mr. Smith stated that Planning hired Senior Planner Ben Barcroft, who will be staff liaison at future Board
26 of Adjustment meetings and that Mr. Stanley was filling in for Mr. Barcroft who was out of the country
27 getting married.

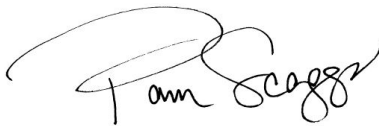
28
29 **OTHER BUSINESS**

30 None

31
32 **ADJOURN**

33 There being no further business, Mr. Rattler made the motion to adjourn, second by Mr. Bailey and
34 unanimously approved.

35
36 The meeting was adjourned at 7:44 PM on Tuesday September 6, 2022.

37
38
39 

40
41
42 Pam Scaggs, Recording Secretary
43 Board of Adjustment



44
45
46 Ryan French, Chair
47 Board of Adjustment

EXHIBIT 1



Board of Adjustment September 6, 2022 Meeting

Staff Report

TO: Board of Adjustment
FROM: Ben Barcroft, Senior Planner
SUBJECT: Case# BOA-2022-11: Special Use Permit
Applicant: Jesse Robinson

Request for a Special Use Permit to allow a multi-family townhome development in the General Commercial (GC) 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 for the Special Use Permit.
3. Motion to approve (approve with conditions) (deny) the issuance of the Special Use Permit
4. Motion to Issue Order of Approval.

B. Required Votes to Pass Requested Action

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

C. Background

The applicant, Jesse Robinson, is requesting a Special Use Permit (SUP) to allow development of a six-unit townhome development in the General Commercial (GC) zoning district on unaddressed property located at the corner of W 16th Street and N. Main Street, further identified as Rowan County Parcel Identification Number 159 073.

The applicant proposes to construct the units along N. Main Street with driveway access from a proposed residential public alley off of W 16th Street.

Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance (KDO), issuance of a SUP is required for multi-family uses in the GC zoning district. The subject property is approximately 0.45 +/- acres

D. Fiscal Considerations

None

E. Policy Issues

Section 2.5.A(5) of the KDO requires that the Board of Adjustment shall only approve a special use permit if the applicant demonstrates that the criteria below have been met. Staff analysis of each criterion is noted.

Staff Findings of Fact - Based on application review

Yes No

The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.

This property is in the "Urban Corridor" Character Area in the *Move Kannapolis Forward 2030 Comprehensive Plan*.

The Urban Corridor Character Area includes activity corridors with places to live, work, and shop in a walkable configuration. The Area may include both vertically and horizontally mixed uses, however infill development will be vertically mixed, with ground floor retail and offices and housing on upper floors. These developments are located close together and near the street, providing connections to surrounding development.

Based on the character areas noted above, the proposed development is compatible with the future and existing uses in the surrounding area.

Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.

The townhomes shall have individual driveway access from a residential public alley located along the rear of the property that is also to be used as a secondary Fire Department access for the units.

The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, or gas.

No vibration, noise, odor, dust, smoke, or gas beyond what is normal for a single-family use is expected as a result of the development of this property.

The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

The proposed use would not impede development of the surrounding properties for uses allowed within their respective zoning districts.

The establishment, maintenance, or operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare.

There is no apparent danger or detriment to the overall public safety, health and welfare resulting from the proposed use.

The proposed use complies with all applicable provisions of the KDO.

The proposed use shall comply with all sections of the City of Kannapolis Development Ordinance, conditions of approval, and any other applicable local, state, and Federal regulations. It is understood by the applicant that unless specifically relieved of a requirement, in writing, all KDO requirements, including compliance with the Technical Review Committee site plan review and approval process, must be met. Sewer service is subject to allocation based upon sewer treatment capacity.

The applicant consents in writing to all conditions of approval included in the approved special use permit.

The applicant has signed the Conditions of Approval acceptance.

F. Legal Issues

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

In order to determine whether a special use permit is warranted, the Board must decide that each of the six findings as outlined below has been met and that the additional approval criteria has been satisfactorily addressed. If the Board concurs 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 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 six criteria below. Should a special use permit be approved, the Board may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use.

Yes No

The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.

Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.

The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

The establishment, maintenance, or operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare.

The proposed use complies with all applicable provisions of the KDO.



The applicant consents in writing to all conditions of approval included in the approved special use permit.

G. Recommendation

Based on the above findings, staff recommends **approval with conditions** of the Special Use Permit based on the staff Findings of Fact (or as modified by the Board), the conceptual site plan, and compliance with all local, state and federal requirements.

Conditions of Approval proposed by staff:

1. The permitted uses allowed by this SUP shall only include six (6) townhome units.
2. Proposed site plan included with this application is for illustrative purposes only. Final design of the site shall comply with the Kannapolis Development Ordinance.
3. Must comply with City's Land Development Standards Manual (LDSM).
4. The developer will construct curb, gutter and sidewalk along the entire road frontage where development has access and/or street frontage. The improvements will be constructed to City standards.
5. A Site Plan shall be submitted and approved by City Staff prior to issuance of a Zoning Clearance Permit.
6. Any lighting installed on the subject property shall be full cut-off fixtures with all lighting directed downward and away from adjacent residential property.
7. A NCDEQ Sediment & Erosion Control Permit is not required since the site is < 1.0 ac, however, provide a basic erosion control plan with details. No calculations required.
8. Sanitary sewer service is subject to allocation based upon sewer treatment capacity.

The Board of Adjustment should consider all facts and testimony after conducting the Public Hearing and render a decision accordingly to approve, approve with conditions, or deny the Special Use Permit.

H. Attachments

1. Special Use Permit Application
2. Vicinity Map
3. Zoning Map
4. Future Land Use Map
5. Conceptual Site Plan
6. List of Notified Properties
7. Notice to Adjacent Property Owners
8. Posted Public Notice

I. Issue Reviewed By:

Planning Director	X
Assistant City Manager	X
City Attorney	X

EXHIBIT 2



Board of Adjustment September 6, 2022

Staff Report

TO: Board of Adjustment

FROM: Boyd Stanley, Assistant Planning Director

SUBJECT: Case# BOA-2022-13: 495 Kansas Street
Applicant: Shelly Stein-Kannapolis Real Estate Agency

**Request for a variance from the setback requirements of Article 3, Section 3.3.E
R-4 (Residential 4 District) Standards of the Kannapolis Development Ordinance (KDO).**

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

Per NCGS § 160D-406, the concurring vote of four-fifths of the board shall be necessary to grant a variance. Six votes are required to approve or deny the requested actions.

C. Background

The applicant, Shelly Stein-Kannapolis Real Estate Agency, is requesting a variance from Article 3, Section 3.3.E of the Kannapolis Development Ordinance (KDO), which requires a minimum 10-foot side-yard setback for properties located within the Residential 4 (R-4) zoning district. The parcel is further identified as Cabarrus County Parcel Identification Number 5612-99-1048 and measures +/- 38,454 square feet, respectively. Currently there is a new single-family house constructed 8.9-feet from the side-yard property line along the northeast boundary of the property. Due to the significant amount of 100- and 500-year FEMA Floodplain overlaying the subject property, the applicant constructed the front corner of the new home 1.1 feet into the required side-yard setback to utilize the most developable portion of the lot. Therefore, the applicant is requesting a variance to accommodate the structure which was constructed 1.1-feet into the required setback.

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 hardship is a result of the existing lot of record restricting the placement of a single-family home. Without the requested variance, the newly constructed house would not be in conformity as constructed due to the existing floodplain area.

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

Both the exiting topography and floodplain conditions on the subject property present a hardship to make reasonable use of the property under the current zoning.

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 or floodplain.

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 requested variance is consistent with the spirit, purpose, and intent of the KDO. The variance will bring the new home into conformance, eliminate the encroachment, and prevent any future litigation between future property owners.

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

In order to determine whether a variance is warranted, the Board must decide that each of the four criteria as outlined below has been met. If the Board concurs 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 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 four criteria below. Should a variance be approved, the Board 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 is supportive of the requested 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
Assistant City Manager	X
City Attorney	X