

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

3  
4 **Minutes of Meeting**  
5 **Tuesday October 5, 2021**  
6

7 The Board of Adjustment met on Tuesday October 5, 2021 at 6:00 PM at City Hall, 401 Laureate  
8 Way, Kannapolis, North Carolina.  
9

10 **Board Members Present:** Ryan French, Chair  
11 Emily Joshi, Vice-Chair  
12 Cyrus Rattler  
13 Daisy Malit  
14 Holden Sides  
15 Wilfred Bailey, Sr.  
16 Danielle Martini, Alternate  
17

18 **Board Members Absent:** N/A  
19

20 **Staff Present:** Richard Smith, Planning Director  
21 Boyd Stanley, Assistant Planning Director  
22 Wilmer Melton, Assistant City Manager  
23 David Hancock, IT  
24 Pam Scaggs, Recording Secretary  
25

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

28 **Visitors Present:** Alan Presel  
29

30 **CALL TO ORDER**

31 Chair Ryan French called the meeting to order at 6:02pm.  
32

33 **ROLL CALL AND RECOGNITION OF QUORUM**

34 Recording Secretary Pam Scaggs called the roll and presence of a quorum was recognized.  
35

36 **APPROVAL OF AGENDA**

37 Chair French asked for a motion to approve the Agenda, which was made by Ms. Joshi, second by  
38 Mr. Bailey and the motion was unanimously approved.  
39

40 City Attorney, Walter Safrit recognized that Alternate Board member Danielle Martini, is sitting  
41 on the Board as a regular member.  
42

43 **PUBLIC HEARING**  
44

45 **SWORN IN FOR TESTIMONY**

46 Ryan Lipp and Alan Presel  
47

1 **BOA-2021-14 – Request for a Variance for property located at 810 & 812 Marie Ave.**

2 Senior Planner, Ryan Lipp gave a PowerPoint presentation regarding a request for a Variance and  
3 provided the application details for BOA-2021-14, attached to and made part of these minutes as  
4 Exhibit 1. Mr. Lipp provided the application details noting the applicant, property owners, address,  
5 Parcel Identification Numbers, zoning and dates that public notice was made. He stated that the  
6 applicant is requesting a variance from Article 4, Table 4.7-1 to allow an adjustment of an existing  
7 lot line between two existing parcels  
8

9 Mr. Lipp directed the Board’s attention to the Vicinity, Zoning and 2030 Future Land Use maps,  
10 as well as the site plan and street view of the properties. Utilizing the site plan, he further detailed  
11 the requested adjustment stating that 812 Marie Ave. does not currently meet minimum lot  
12 requirements for the Residential Medium Density (RM-2) zoning district. Mr. Lipp added that an  
13 existing structure located at 812 Marie Ave. encroaches onto the property located at 810 Marie  
14 Ave. and that approval of the variance request will fix the encroachment nonconformity but will  
15 continue a nonconformity for 810 Marie Ave. regarding minimum setback requirements. He  
16 reviewed staff Findings of Fact as follows:  
17

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

19 The current homes have existed in their current configuration since prior to the  
20 adoption of the current ordinance. If a variance is not granted, the lots will continue  
21 to be non-conforming, and the encroachment will remain.  
22

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

25 The current homes have existed in their current configuration since prior to the  
26 adoption of the current ordinance. The orientation of the homes with respect to the  
27 current shared property line creates an encroachment unique to these lots.  
28

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

31 The current homes have existed in their current configuration since prior to the adoption  
32 of the current ordinance. There is no record that any actions by the current owner(s)  
33 caused the hardship.  
34

35 **4. The requested variance is consistent with the spirit, purpose, and intent of the**  
36 **ordinance, such that public safety is secured, and substantial justice is achieved**  
37 **and will preserve its spirit.**

38 The requested variance is consistent with the spirit, purpose and intent of the UDO.  
39 The variance will bring the existing lots more into conformance, eliminate the  
40 encroachment, and prevent any future litigation between future property owners.  
41

42 Mr. Lipp stated that staff is recommending approval of the Variance request, reminded the Board  
43 of the actions requested, concluded his presentation and made himself available for questions.  
44

1 Ms. Joshi asked for clarification of the requested lot line changes. Mr. Lipp utilized the site plan  
2 to show the proposed lot lines. Ms. Joshi expressed concern that one property owner would be  
3 losing most of their back yard.

4  
5 Mr. Bailey asked for clarification on whether the carport is causing the issue with the setback? Mr.  
6 Lipp explained that since the carport is attached to the home, it is considered a primary structure  
7 which does require more strict setback requirements than that of an accessory structure but the  
8 variance is still required because the properties do not currently meet the minimum setback  
9 requirements.

10  
11 City Attorney, Walter Safrit, expressed confusion at having one case for two separate properties  
12 and asked for clarification. Both Mr. Lipp and Planning Director, Richard Smith, explained that  
13 since the variance request regarded a shared lot line, the interpretation was made that it could be  
14 heard as one case. Mr. Safrit asked if both property owners approved of the variance request. Mr.  
15 Lipp deferred to the applicant.

16  
17 Mr. Rattler offered his understanding of the variance request stating that the request will eliminate  
18 the encroachment but will continue a nonconformity with minimum setback requirements. Both  
19 Mr. Lipp and Mr. Smith confirmed.

20  
21 The applicant, Attorney Alan Presel, stated that he originally submitted two variance applications  
22 but was advised by Mr. Lipp that the variance request could be handled under one case. Mr. Presel  
23 identified the property owners and stated that both owners are aware of the variance request and  
24 have signed the variance applications.

25  
26 Ms. Joshi asked if the property owner of 810 Marie Ave. is aware that they will be losing part of  
27 their back yard? Mr. Presel responded that both property owners have given their approval for the  
28 requested variance and the requested lot line adjustment does follow an existing fence line.

29  
30 There being no additional questions or comments, Chair French opened the Public Hearing which  
31 was then closed with no public comment being made.

32  
33 Chair French asked for a motion to accept the City's exhibits, including the staff report into the  
34 record which was made by Ms. Malit, second by Mr. Rattler and the motion was unanimously  
35 approved.

36  
37 Chair French asked for motion to approve or revise the Findings of Fact. Ms. Joshi made the  
38 motion to approve the Findings of Fact, second by Ms. Martini and the motion was unanimously  
39 approved.

40  
41 Chair French asked for a motion to approve or deny the issuance of the variance. Ms. Joshi made  
42 the motion to approve, second by Mr. Bailey and the motion was unanimously approved.

43  
44 Chair French asked for a motion to issue the Order of Approval which was made by Mr. Rattler,  
45 second by Mr. Bailey and the motion was unanimously approved.

1 **TRAINING**

2 Planning Director, Richard Smith stated that he would like to provide training at least once a  
3 year regarding various topics. He provided a PowerPoint presentation and noted that this training  
4 will address the following:

- 5
- 6 • What is a quasi-judicial hearing?
- 7 • What cases does a Board of Adjustment hear?
- 8 • Variance Procedures
- 9 • Appeals Procedures
- 10 • Special Use Permit Procedures
- 11 • Rules of Procedure
- 12 • Quasi-judicial Hearing Procedures
- 13 • Conflicts of Interest
- 14 • Evidence
- 15 • Findings & Decisions
- 16

17 Mr. Smith provided the definition of “quasi-judicial” and talked about the role that the Board plays  
18 in making determinations with these types of hearings. He emphasized that they should be  
19 impartial decision-makers based on evidence and not hear-say. Mr. Smith stated that the Board  
20 will render decisions on variances, appeals, Special Use Permit’s and any other subjective approval  
21 set forth in the development ordinance and then provided additional detail on each type of request  
22 and the process by which an applicant applies for each request. Mr. Smith also provided detail on  
23 recent legislative changes affecting the requests.

24

25 Mr. Rattler asked for further clarification on nonconforming lots. Mr. Smith stated that these are  
26 typically lots that existed prior to adoption of the Ordinance [Unified Development Ordinance  
27 (UDO)] that do not meet existing minimum lot requirements. He used Case No. BOA-2021-14 as  
28 an example to explain existing nonconformities. There was discussion regarding variance requests  
29 and clarification of what is being accomplished with a variance. Mr. Rattler referenced variances  
30 with flood issues and asked how the Board is equipped to make decisions without being flood  
31 experts. Mr. Smith responded staff will consult with City Engineers or the applicant would provide  
32 field experts to provide testimony. Ms. Malit asked how someone is sworn-in when they don’t  
33 believe in the Bible. Mr. Smith responded that the Bible doesn’t have to be used to swear someone  
34 in to provide testimony.

35

36 Mr. Smith reviewed the Rules of Procedure and Quasi-judicial hearing procedures. He clarified  
37 that Board of Adjustment decisions are appealed to Superior Court and not to City Council. Mr.  
38 Smith talked about the importance of the Board being impartial decision makers and provided  
39 examples of conflicts, bias and ex-parte communication. He concluded the training and made  
40 himself available for questions.

41

42 **DIRECTOR UPDATE**

43 Planning Director, Richard Smith, stated that the Planning Department is now fully staffed and  
44 provided a brief background on each of the staff members. He stated that an additional Code

1 Enforcement Officer was added as an initiative by City Council to focus on cleaning up the  
2 City's corridor's


3  
4 **OTHER BUSINESS**

5 No update.

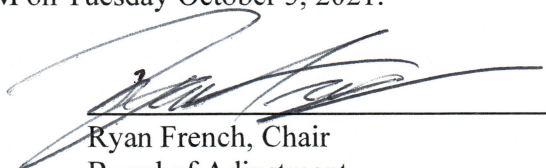
6  
7 **ADJOURN**

8 There being no further business, Ms. Joshi made a motion to adjourn, second by Ms. Malit and the  
9 motion was unanimously approved.

10  
11 The meeting was adjourned at 6:53 PM on Tuesday October 5, 2021.

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Ryan French, Chair  
Board of Adjustment

18 Pam Scaggs, Recording Secretary  
19 Board of Adjustment

# EXHIBIT 1

## Board of Adjustment Minutes

October 5, 2021



### Board of Adjustment October 5, 2021

#### Staff Report

**TO:** Board of Adjustment

**FROM:** Ryan Lipp, Senior Planner

**SUBJECT:** Case# BOA-2021-14: 810 and 812 Marie Ave.  
Applicant: Alan M. Presel (Brock & Scott, PLLC)

**Request for a variance from the provisions of Article 4, Table 4.7-1 *Dimensional and Density Standards* of the Unified Development Ordinance (UDO).**

#### 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, Alan M. Presel with Brock & Scott, PLLC, is requesting a variance from Article 4, Table 4.7-1 of the Unified Development Ordinance (UDO), which requires a minimum 10-foot side setback for properties located within the Residential Medium Density (RM-2) zoning district in order to adjust a dividing line between two (2) parcels. The parcels are further identified as Rowan County Parcel Identification Numbers 151 296 and 151 297 and measure approximately .276 +/- acres and 0.184 +/- acres, respectively. Currently there is a building encroachment from 812 Marie Ave. onto 810 Marie Ave. The applicant wishes to rectify this, but in doing so, the lots will not meet minimum setback standards. The lots have existed in their current configurations since prior to the adoption of the UDO. Furthermore, 812 Marie Ave does not currently meet the minimum lot area of 10,000 feet required by Article 4, Table 4.7-1. The lot adjustment will bring 812 Marie into conformance with this standard.

**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 homes have existed in their current configuration since prior to the adoption of the current ordinance. If a variance is not granted, the lots will continue to be non-conforming, and the encroachment will remain.

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

The current homes have existed in their current configuration since prior to the adoption of the current ordinance. The orientation of the homes with respect to the current shared property line creates an encroachment unique to these lots.

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

The current homes have existed in their current configuration since prior to the adoption of the current ordinance. There is no record that any actions by the current owner(s) caused the hardship.

           **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 UDO. The variance will bring the existing lots more 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.**

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

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

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**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.**

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**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



