

18APPEAL1003

Appeal of a Staff Determination

3599 Henry Ave



Board of Zoning Adjustment Public Hearing

Chris French, AICP, Planning & Design Supervisor

July 2, 2018

Request

Appeal of a staff determination issued by the Office of Planning & Design Services concerning a request for nonconforming use rights for a two-family dwelling (duplex) at 3599 Henry Ave.

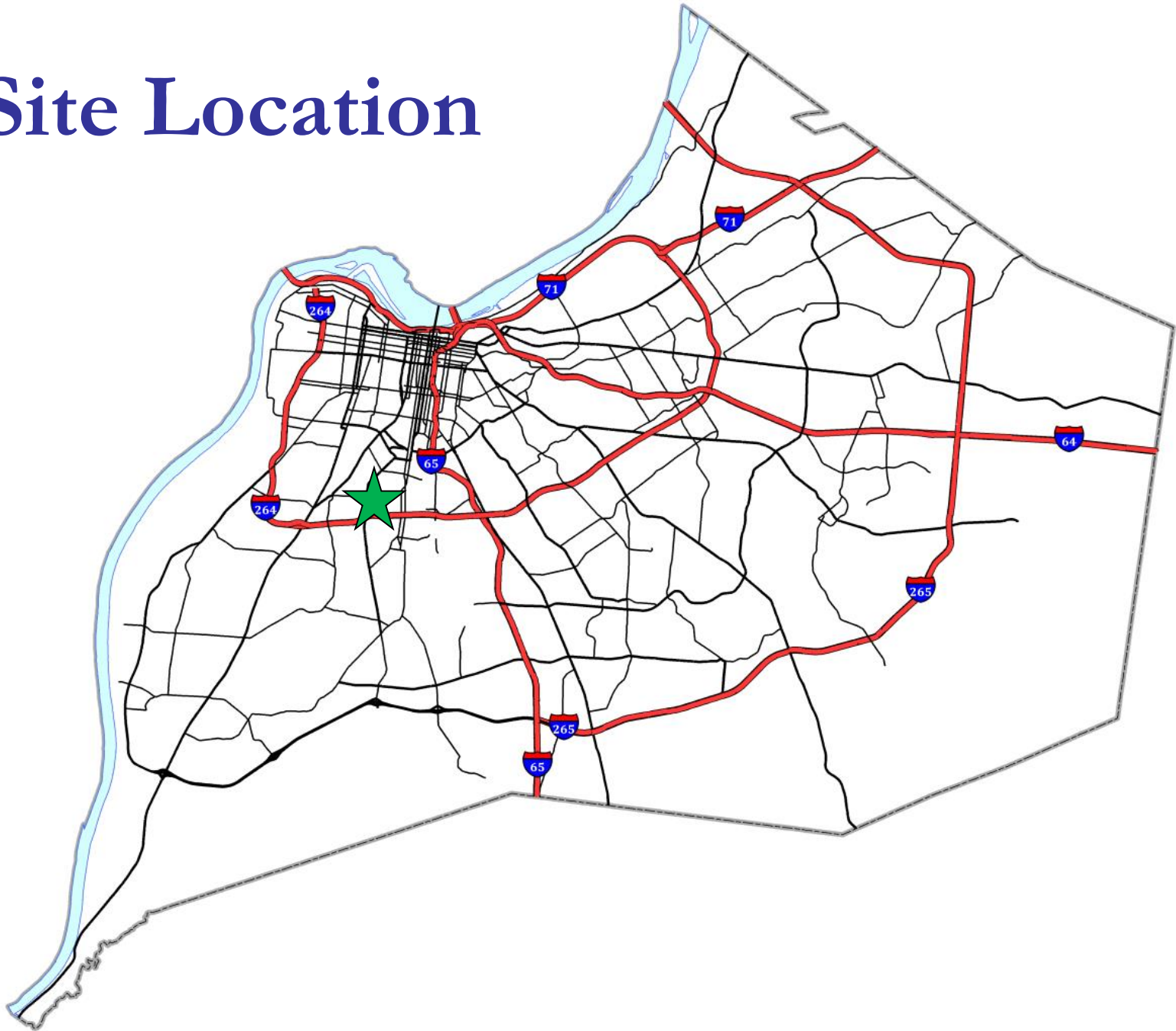
Case Summary/Background

- The property is developed with a single building in 1940.
- The building appears to have been originally designed as a single-family residence. However, there are currently two units within it.
- The property is zoned R-5 Single Family. This zoning classification does not permit a duplex.
- In order for a duplex to be lawfully nonconforming, it must have been lawfully in existence at the time in which the zoning regulation which does not permit the duplex was enacted.
- Further, the nonconforming use must not have been abandoned as the abandonment terminates the nonconforming use status.

Case Summary/Background

- The property owner/appellant requested a determination that the building is a legally nonconforming duplex.
- Staff determined that there was not adequate evidence to support a determination that a duplex is legally nonconforming.
- The appellant filed an appeal of the staff determination in a timely manner.
- As set forth in Louisville Metro Land Development Code (LDC) Sec. 11.7.3, pursuant to Kentucky Revised Statutes (KRS) 100.257 and 100.261, the Board shall hear an appeal of a decision of an administrative official.
- Additional information provided regarding a second address 1135 Whitney Avenue
- 1968 newspaper marriage license listing about a resident of 1135 Whitney Avenue

Site Location



Zoning/Form Districts

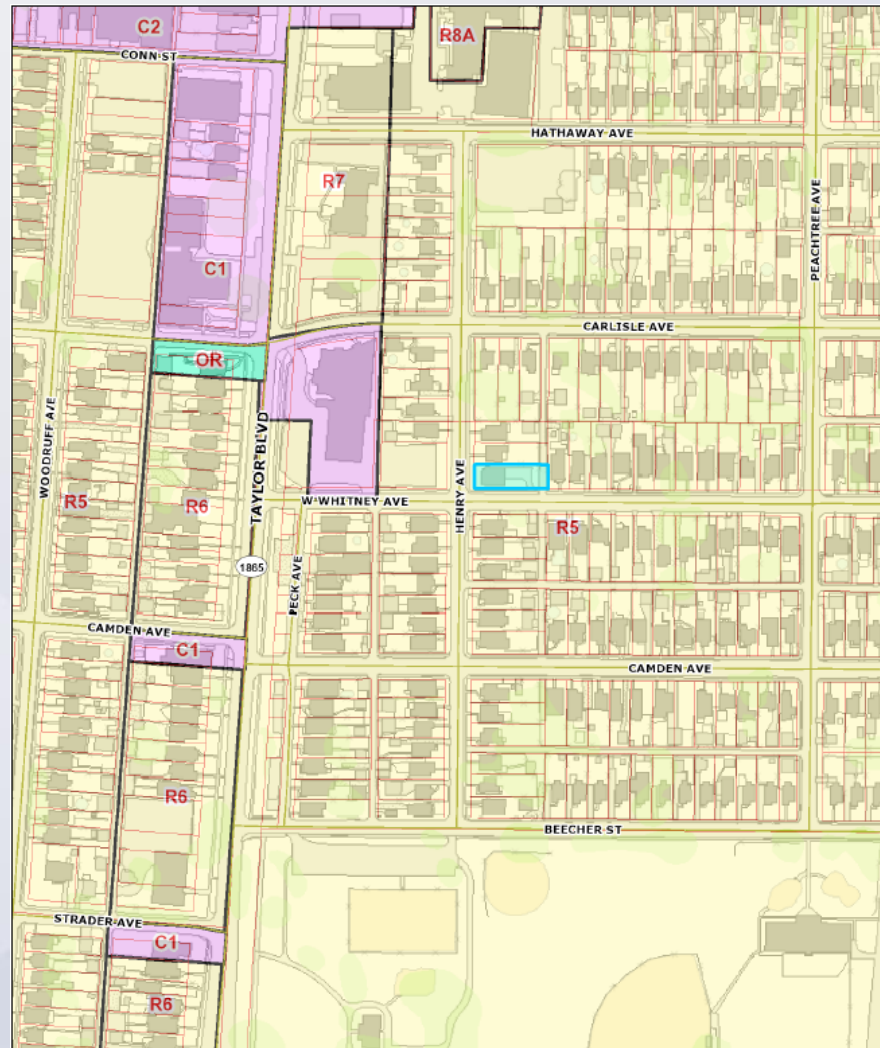
Subject Property: R5/TN

North: R5/TN

South: R5/TN

East: R5/TN

West: R5/TN



N
0 120 240 360
ft

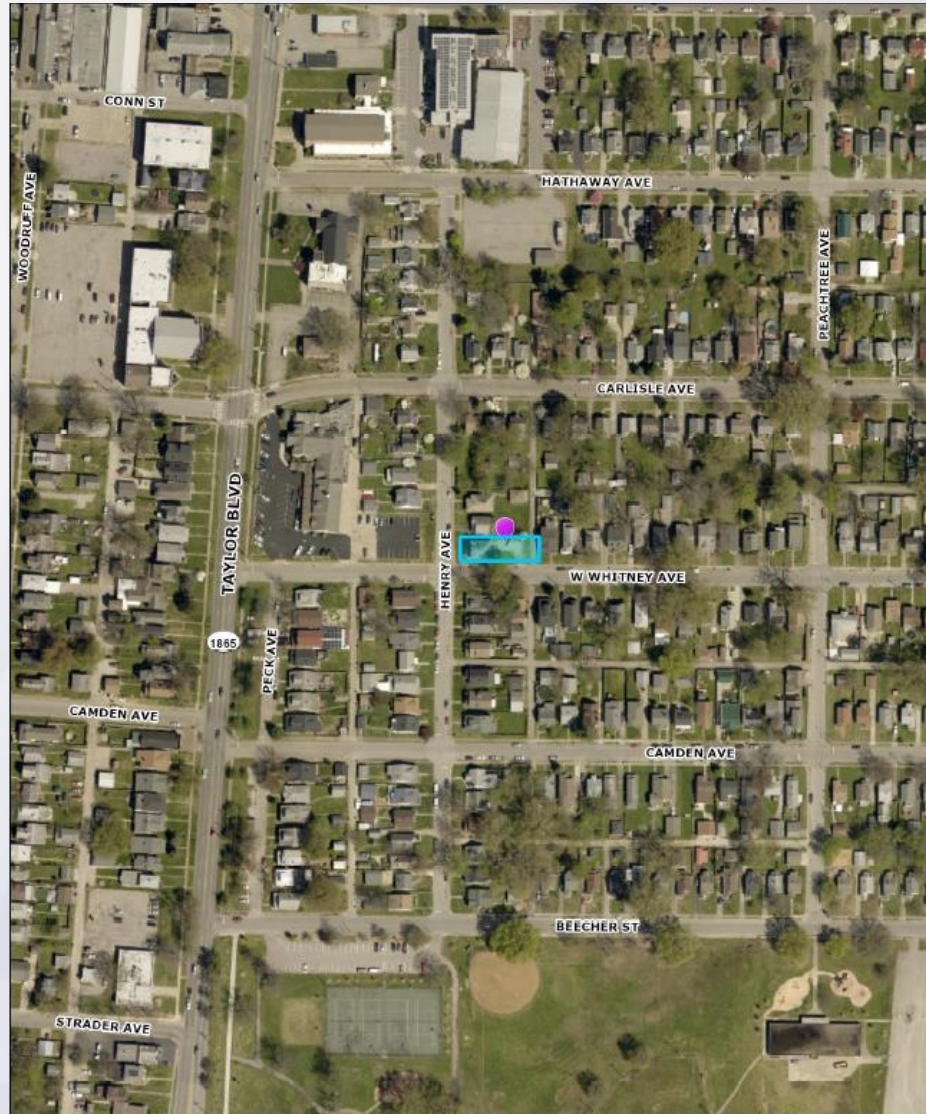
18APPEAL1003 - 3599 Henry Ave LOJIC

Wednesday, June 20, 2018 | 11:10:17 AM

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This map is not a legal document and should only be used for general reference and identification.

Aerial Photo/Land Use





06/15/2018 11:08

Front of Structure - West Side
of Property

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06/15/2018 11:09

Front and Side of Structure -
Southwest Side of Property

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Rear of Structure - East Side
of Property

06/15/2018 11:11

TRAFFIC DEAL 1003



Gas Meters

06/15/2018 11:08



Electric Meters

06/15/2018 11:09



A/C Units

06/15/2018 11:09



Standards of Review

A nonconforming use is an established activity which lawfully existed at the time of the enactment of any zoning regulation which would not permit such activity.

The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the appropriate Board on whether a nonconforming use has been abandoned shall be on the party asserting that the nonconforming use has been abandoned. However, a showing that the subject property has not been regularly used for the purposes for which the nonconforming use status is claimed for a period of one year shall create a presumption of such abandonment, and thereupon the burden of proof shall shift to the party asserting that the nonconforming use has not been abandoned. The Board may accept any substantial evidence sufficient to show that the nonconforming use has been discontinued for a period of one year or more. To rebut the presumption, the property owner must show by clear and convincing evidence that:

1. The property owner has undertaken to reinstate the discontinued nonconforming use on the property by such acts as would be undertaken by a reasonable person with the intent to reinstate said nonconforming use; and
2. There is a reasonable prospect that the nonconforming use will be reinstated in the foreseeable future.

Staff Analysis

- The zoning was A (One-Family District) from 1931-66 and has been R-5 (Single Family) from 1966-67 to present.
- R-5 zoning does not permit a duplex.
- Per PVA records, the building currently has a “R – Residential 2 Family Dwelling” property class assignment and is described as “Duplex”.
- This property is within the boundaries of the City of Louisville that existed prior to consolidation to Louisville Metro. A nonconforming rights claim must be dated back to June 18, 1971 or the date in which the zoning regulation which would not permit such activity was enacted (whichever date is later).
- In this case, the R-5 zoning was in place on **June 18, 1971** and duplexes have not been permitted within that zoning category since that date.

Staff Analysis

According to the Appellant:

- One unit is on the first floor and the second unit is on the second floor.
- First floor unit may be accessed from the front and rear of the structure.
- Second floor unit may be accessed from the rear.
- Photographs show separate gas and electric meters.
- Photographs show two furnaces and two water heaters.

Staff Analysis

In both the nonconforming rights and appeal applications, the appellant submitted documentation to support the existence of a duplex.

- An affidavit from previous property owner, stating the property was a duplex for the 42 years he owned it.
- Two leases for the period of January 2017 – 2019.
- Mortgage property value analysis from Freddie Mac – this document has the property checked as single family, but then describes the use as a duplex.

Staff checked the city directories for 1967, 1970-72, 1977, 1982, 1987, 1991, 1997, 2002, 2007, 2012, and 2017:

- Only a single occupant listed without multiple addresses.

Conclusions

- While it does not appear that the building was originally designed as a duplex, the affidavit provided by the appellant suggests the property was a duplex between November 1973 and October 2015.
- In this case, a nonconforming rights claim does not need to date back to their year in which the building was constructed (1940 per the PVA), but 1971.
- The Appellant did present additional information on a second address (1135 Whitney Avenue), this does provide some evidence that two units existed on the property in 1971 based on staff's research of City Directories.
- If the Board finds the referenced supporting evidence as accurate and reliable, in addition to any additional evidence provided at the hearing, nonconforming rights concerning the duplex may be recognized.
- However, the Board must also find that the nonconforming rights were not abandoned and that the building has been continuously used as a duplex. Other than the affidavit and the most recent lease documents, there is little evidence to suggest the property was a duplex in 1971 and that the building was continuously used as a duplex thereafter.

Year	3599 Henry Avenue	1135 Whitney Avenue
1970	Green	Green
1971	Green	Green
1972	Green	Green
1973	Green	Red
1974	Green	Red
1975	White	White
1976	Green	Green
1977	Green	Green
1978	Green	Red
1979	Green	Red
1980	Green	Red
1981	Green	Red
1982	Green	Red
1983	Green	Red
1984	Green	Red
1985	White	Red
1986	Green	Red
1987	Green	Red
1988	Red	Red
1989-1990	Red	Red
1991	Green	Green
1992	White	White
1993	White	Green
1994	Green	Green
1995-1996	White	Green
1997	Green	Green
1998	White	Green
1999	Green	Green
2000	Green	Green
2001	White	Green
2002	White	Green
2003	Red	Red
2004	Red	Red
2005	Red	Red
2006	Green	Red
2007	Green	Red
2008	Red	Red
2009	Red	Red
2010	Red	Red
2011	Green	Red
2012	Green	Red
2013	Red	Red
2014	Green	Green
2015	Green	Green
2016	Red	Red
2017	Red	Red

← **1 year**
1973

← **13 years**
1978-90

Residential Directories

- Address & Resident Listed
- Address But No Resident Listed
- No Address Listed
- No Info

← **11 years**
2003-13

← **2 years**
2016-17

Required Actions

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

1. If the duplex was lawfully in existence on June 18, 1971
2. And if so, has it been continuously used as duplex from June 18, 1971 to present