

Board of Zoning Adjustments
Staff Report
September 9, 2019



Case No:	19APPEAL1005
Project Name:	James Road Appeal
Location:	415 James Road
Appellant:	Mohammad Simo Hakani
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Chris French, AICP, Planning and Design Supervisor

REQUEST(S)

- Appeal of an administrative decision made on May 16, 2019, to deny a nonconforming rights determination request for a duplex

CASE SUMMARY/BACKGROUND

The applicant submitted a nonconforming rights determination application on November 9, 2018. On May 16, 2019, after working with the applicant to find additional documentation, staff determined that there was insufficient evidence to establish that the property has nonconforming rights for a duplex. The Appellant submitted an appeal application on June 13, 2019, which is within the 30-day filing window. The Appellant waived the 60-day review requirement to allow the application to be heard at a later date.

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 appeals of staff determinations in the following areas: 1) written interpretations of the provisions of the LDC and 2) an official action, order, requirement, interpretation, grant, refusal, or decision of an administrative official, zoning enforcement officer or code enforcement officer.

The Appellant is asserting that both units were lawfully established as independent dwelling units and thereby the building is a duplex and not a single-family residence.

The subject property is currently zoned R-5 Single Family Residential. Pursuant to LDC Sec. 2.2.7, this zoning classification does not permit a duplex. Based on staff review of zoning for the area, the site has been in this zoning classification at least since 1971. In order for the duplex to be lawfully nonconforming to this provision, 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 of a nonconforming use terminates the nonconforming use status.

In both the nonconforming rights and appeal applications, the Appellant submitted documentation to support the existence of a duplex. This documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

STAFF ANALYSIS/FINDINGS

The following sections of the LDC are applicable to this case:

Section 1.2.2 Definitions

Section 1.3.1 Use

Section 2.2.7 R-5 Residential Single-Family District

As currently defined in LDC Sec. 1.2.2, the following definitions are relevant to the appeal:

Dwelling, Single Family (or One Family) - A dwelling designed for and occupied exclusively by one family. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line one family dwellings.

Dwelling, Two Family (or Duplex) - Any group of two dwelling units occupying a single lot or building site, whether composed of one or more than one principal building. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line two family dwellings.

Dwelling Unit - Either a single room or two or more connected rooms used exclusively as a single unit and intended for occupancy for no less than thirty (30) consecutive days or more by one family, and providing complete, independent living facilities (which at a minimum includes permanent provisions for living, sleeping, eating, cooking and sanitation which are accessed independently). Notwithstanding the provisions of this definition, where permitted, short term rentals may be occupied by more than one family and for less than 30 consecutive days. This term does not include hotel or motel rooms, extended stay lodging facilities, nursing home rooms, or assisted living residence units.

Family - One or more persons occupying premises and living as one housekeeping unit, and distinguished from a group occupying a boarding and lodging house, fraternity or sorority house, a club, hotel, or motel.

Nonconformity (or Nonconforming) -An activity or a building, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located.

According to Jefferson County PVA records, the property class for this parcel of land is listed as "520 Res 2 family dwelling Duplex".

The nonconforming rights application submitted by the Appellant had sufficient documentation that was corroborated by evidence from the Office of Planning and Design Services to show that the property had been a duplex at least from 1984 to the present. The Appellant states in his appeal application letter that the evidence he provided begins in 1978 and he was unable to obtain information from 1971 to 1978. Staff researched information in office files and could not find any evidence that a duplex existed on the property prior to 1984. The Appellant has not provided any additional evidence with his appeal application that the use existed in 1971.

Staff Conclusions

Without evidence that the duplex use existed in 1971 staff does not believe that nonconforming rights can be established. However, the Board has greater latitude than staff to take additional evidence into consideration, including testimony at the hearing in order to make its determination on an appeal.

Standard of Review

Pursuant to LDC 11.7.3 and KRS 100.257, the Board of Adjustment shall have the power to hear and decide cases where it is alleged by the applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

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 a duplex from June 18, 1971 to present.

RELATED CASES

18NONCONFORM1035 – The administrative decision in this case is the subject of the appeal.

INTERESTED PARTY COMMENTS

No comments submitted.

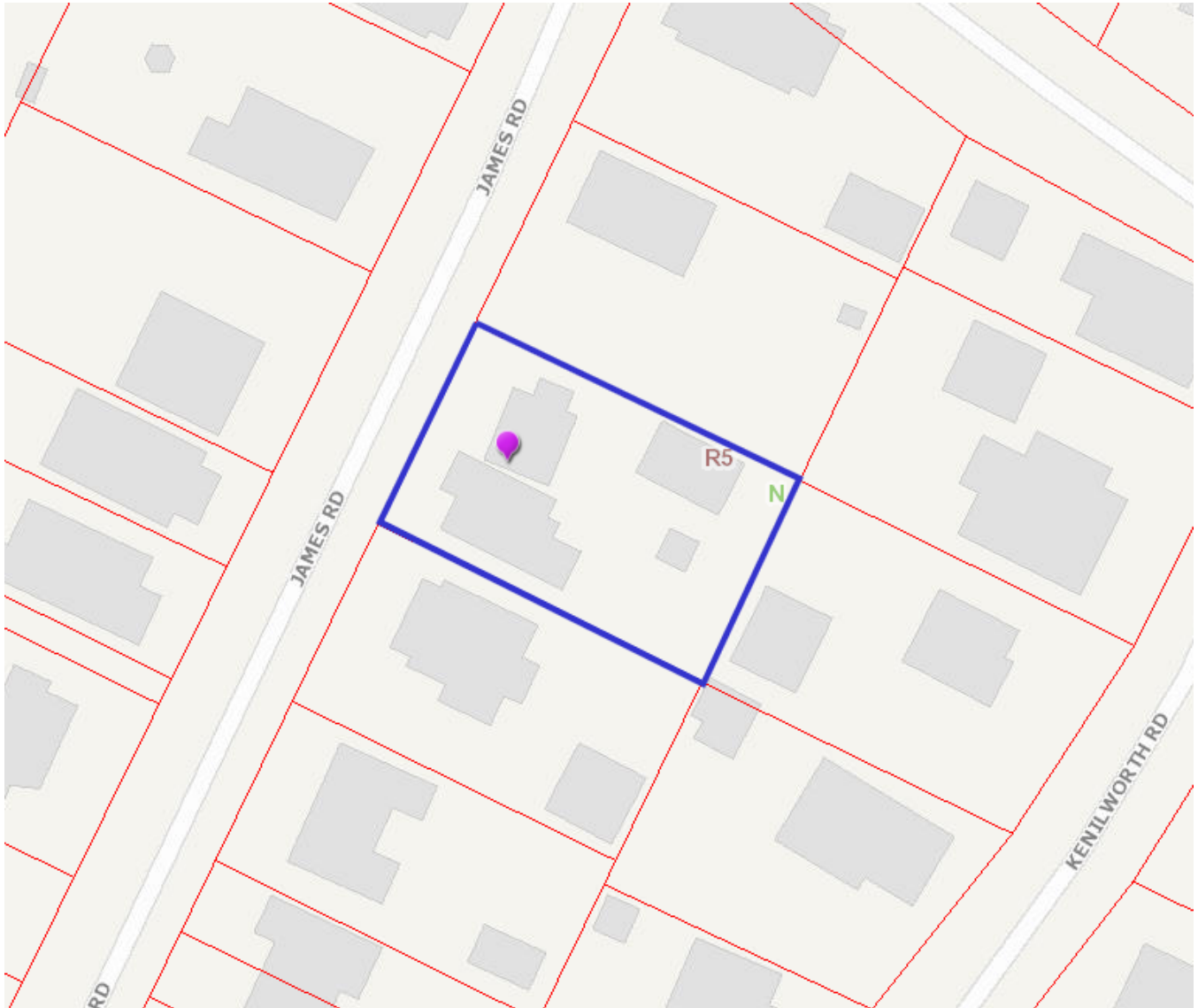
NOTIFICATION

Date	Purpose of Notice	Recipients
8/22/19	Appeal Hearing	GovDelivery District 9
8/24/19	Appeal Hearing	APO Notice List, Appellant, and Planning Director
8/30/19	Appeal Hearing	Legal ad Courier Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

