### Board of Zoning Adjustment Staff Report

March 3, 2014



Case No: Project Name: Location: Owner/Applicant: Size: Existing Zoning District: Existing Form District: Jurisdiction: Council District: Case Manager: 14Appeal1000 Dwelling Units 4112 South Second Street George Meyers 0.132 acres R-5 Traditional Neighborhood Louisville Metro 15—Marianne Butler Steve Hendrix, Planning Supervisor

### REQUEST

The Appellant is requesting nonconforming rights to allow a rear house (violation notice refers to accessory apartment) in an R-5 zoning district.

#### CASE SUMMARY/BACKGROUND/SITE CONTEXT

The property contains the main dwelling facing South Second Street and a second structure that is located at the rear of the property near the alley. The site is located within the Wilder Neighborhood on the west side of South Second Street. That particular side of the street contains single family residences and two family residences while the eastern side is single family residential. Land uses west of the subject site are predominantly apartment buildings facing Third Street with parking lots adjacent to the alley. The Appellant has stated that the structure was built in 1922.

The property was part of the Southern Parkway Area-Wide Rezoning that changed the zoning from R-6, Apartments to R-5, Single Family Residential in 1985.

# Therefore, the continuous line of documentation for proof of nonconforming use would need to extend from 1985 to the present.

The 1977 Sanborn map (Revised 1990) shows two structures on the lot with the subject one labeled as "A" private garage and "D" single family unit.

The Appellant has submitted information showing the insul-brick siding that was popularly used during the first half of the 1900s.

A letter has also been submitted from the property owner of 4114 South Second Street that states the rear structure has been used as a house since at least 1962, (when he was shown property).

Research from the city directories lists only one name, until 2012.

The Appellant has submitted records from 1995, (the year he purchased) until the present.

#### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Two structures	R-5	Traditional Neighborhood
Proposed	Same	R-5	TN
Surrounding Properties			
North	Single and Multi-Family Structures	R-5	TN
South	ingle Family Residences R-5 T		TN
East	Single Family Residences	R-5	TN
West	Single and Multi-Family Structures	R-6	TN

#### **PREVIOUS CASES ON SITE**

#### 9-41-85

#### Southern Parkway Area-Wide Rezoning

On June 20, 1985, the Planning Commission approved the change in zoning from R-6, Apartment to R-5, Residential, this portion of the area-wide rezoning. The Board of Aldermen approved on February 25, 1986.

#### INTERESTED PARTY COMMENT

None Received

#### APPLICABLE PLANS AND POLICIES

Land Development Code KRS

**STAFF ANALYSIS**: The following sections of the Land Development Code appear to be applicable to this case. The full text of these sections may be found within the Land Development Code for all of Jefferson County.

Chapter 1.2.2.	Definitions
Chapter 1.3.1	Nonconformance
Chapter 2.2.7	R-5, Residential Single Family District

In addition, KRS 100.253 is the State statue that deals with non-conforming uses.

The Land Development Code and state law indicate that a nonconforming use is any established lawful activity conducted on a parcel at the time of enactment any zoning regulation which would not permit such activity on that parcel. A nonconforming use may be continued as then established until it is abandoned. However, such a use shall not be enlarged or extended beyond the scope and area that existed at the time the nonconformity began. The Board of Zoning Adjustment has the authority to allow a change from one nonconforming use to a

second nonconforming use if the new use is in the same or more restrictive classification than the prior use and is no more odious or offensive to surrounding properties than was the first non-conforming use.

The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the Board of Zoning Adjustment 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 had 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;
- 2. There is a reasonable prospect that the nonconforming use will be reinstated in the foreseeable future.

Abandonment does not appear to have taken place.

#### ZONING HISTORY

Before 1985-----Present-----R-6, Apartments 1986.----Present-----R-5, Residential, Single Family District

#### LAND USE HISTORY

From 1971 through 2011, the directories list only one name. In 2012 and 2013, two surnames are listed.

#### STAFF CONCLUSIONS

The letter from the property owner of 4114 South Second Street and the research from the Sanborn maps document that the rear house has been used at this location as a second dwelling since 1985, the year when the property changed zoning from R-6, Apartments to R-5, Single Family Residential. Additional information supports the Appellant's ownership time frame and the fact that abandonment did not take place. Therefore, it appears that from 1985 to the present, the rear structure has been used a single family dwelling.

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

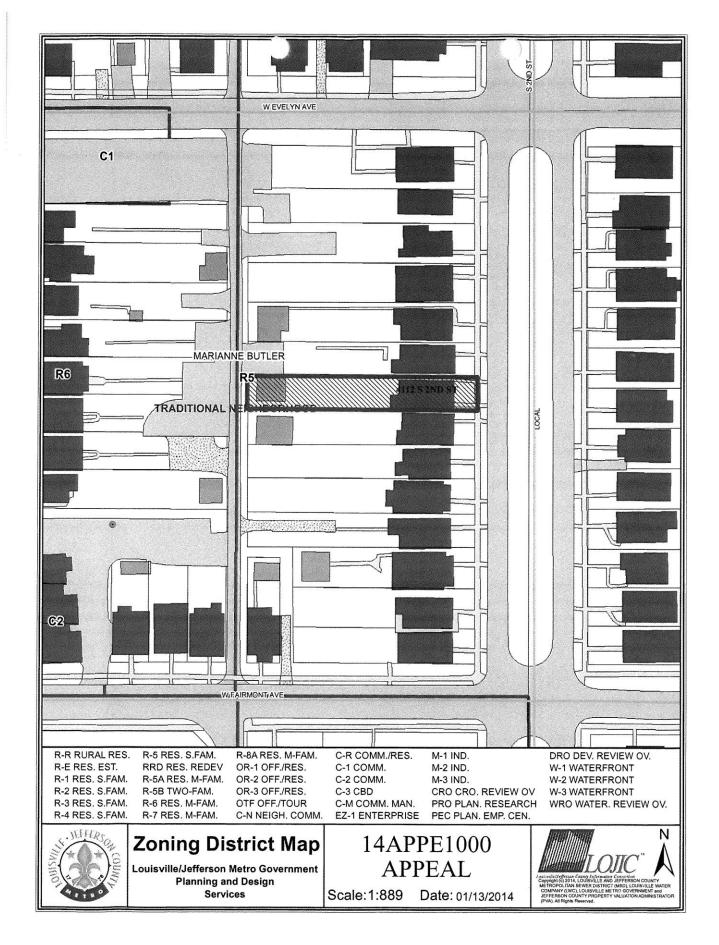
- 1. If nonconforming rights exist for the rear structure at 4112 South Second Street to be the second dwelling unit?
- 2. If the Notice of Violation issued by the Department of Codes and Regulations was proper?

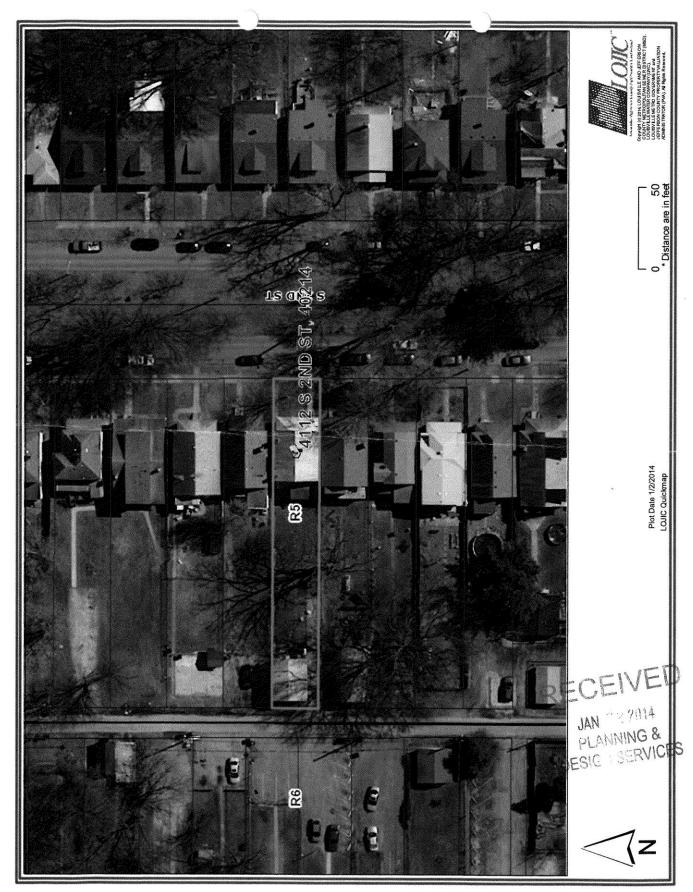
#### NOTIFICATION

Date	Purpose of Notice	Recipients
2.14.14	Notices ready to be mailed	Appellant, Adjacent Neighbors
2.18.14	Sign Posted	Neighbors
2.21.14	Legal Ad in paper	Circulation Area

#### ATTACHMENTS

- 1. Zoning Map
- 2. Aerial Photograph
- 3. Violation Notice
- 4. Appellant's Justification
- 5. 1977 Sanborn Map (Revised 1990)
- 6. Letter from 4114 South Second Street property owner
- 7. Appellant's January 2, 2014 letter
- 8. 2001 picture showing insul-brick siding
- 9. 2013 picture showing vinyl siding
- 10. Interior Pictures
- 11. Rent Records
- 12. Maintenance Records
- 13. Insurance listing-"garage/apt"
- 14. Mortgage Survey
- 15. LGE- lists "Rear"





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le-Jefferson Councy Metro Government

#### partment of Codes & Regulations

**Property Maintenance Division** 444 S. 5th Street, Suite 200 - Louisville, KY 40202 Phone: Phone: 502.574.2508 Web Site: louisvilleky.gov/ipl/

Aumber: 13PM3522-1153769

12/4/2013

Page 1 of 2

33

240,

GEORGE E & GERALDINE R MEYERS 2216 WADSWORTH AVE LOUISVILLE, KY 40205-3062

ocation: 4112 S 2ND ST

our property was inspected on December 03, 2013 and found the existence of one or more violations of the Louisville/Jefferson ounty Development Code.

ou must cease immediately using this property in violation of the Land Development Code.

allure to comply with this Notice will result in fines against you of not less than \$10 but not more than \$500 for each violation with ich day of violation. Each day that a violation continues after this notice shall be deemed a separate offense.

you disagree with this Notice, you may file an appeal to the Board of Zoning Adjustment (BOZA). Appeals must be filed withing rty (30) days of this Notice, using the offical BOZA appeal form along with any supplemental documentation required. A copy of e appeal must also be forwarded to me at the time the appeal is filed. BOZA appeal application forms are available at the epartment of Codes & Regulations Customer Service Desk or online at

vill be returning to your property in the near future to ensure that you have complied with this Order. Should you have any performance in the number below.

RONALD MILLER rispector 502)773-2052 onald.miller@louisvilleky.gov



Case Number: 13PM3522-1153769

Page 2 of 2

#### Z194 NON-PERMITTED USE-RESIDENTIAL

Chapter 2.2.2-13/Article 4.1-13 Non-Permitted Use: You are allowing a non-permitted use to exist on the above referenced residential property. This is in violation of The Land Development Code for Louisville and Jefferson County (Chapter 2.2.2-13) OR You are allowing a non-permitted use to exist on the above referenced residential property. This is in violation of The Development Code for Louisville and Jefferson County (Chapter 2.2.2-13) OR You are allowing a non-permitted use to exist on the above referenced residential property. This is in violation of The Development Code for Louisville and Jefferson County (Article 4.1-13).

**Comments:** You are allowing a non-permitted use to exist on the above referenced residential property. Accessory apartment is not permitted on property zoned R5 single family residential.

Responsible: OWNER

Subject violation needs to be in compliance on or before January 03, 2014 to avoid additional fines and court action.

RECEIVED JAN 02 7014 PLANNING & DESIGN SERVICES



Published February 26, 2014

Case: 14 Appeal 1000



## Nonconforming Rights Application

	Louisville Metro Planning &	Design Services	RECEIVED
	Case No.: 13 PM 3522-115 3769	Intake Staff:	The 12 2014
V.	Date: January 2, 2014	Fee: <u>NO FEE</u>	PLANNING &

#### Site Information:

le mormation.	
Property Address(es):	4112 South 2nd Street - Rear House
Property Parcel ID(s):	· ·
Existing Zoning District:	Existing Form District:

#### **Description of Nonconforming Use:**

Please be as detailed as possible when describing the use and areas in which the use takes place

2 story, 20,25 ft. X 24.35 ft., on rear of 4112 South 2nd St., house has been rented from 1995 to 2014 (19 years) continuously since purchase in 1995, see attached rent record & tenant list. See also pictures of house w/original siding in 2001 picture, built in 1922. Purchased from Erlean Cooper, (Joyce Vincent, day. rented house) (2 sons), Continuing research to 1971. Please present evidence proving each of the following:

1. The use lawfully existed on the property prior to adoption, or amendment, of the zoning regulation that makes the use nonconforming:

Original Cabinets Kitchen, Windows When built ab, 1922, same until 1995 replaced cabinets; windows in 2005\$ 2004. See Pictures of Original House with 1920's siding & Windows. see also Pictures of Original Oak Floors

2. The use existed continuously on the property since the time it became nonconforming, without an interruption of more than twelve (12) consecutive months:

See Attached Continuous Rent & Tenant Records from 1995 to 2014. Have Talked to 6 Attorneys in search of one who has time during December Available for Assistance & currently following Advice of Attor. Scott Jones & Attor. Bissell Roberts of (Assoc. of) Barden werper Talbott & Roberts, PLLC. 3. The use has not been expanded, or relocated, on the property since the adoption of the zoning regulation that makes it nonconforming.

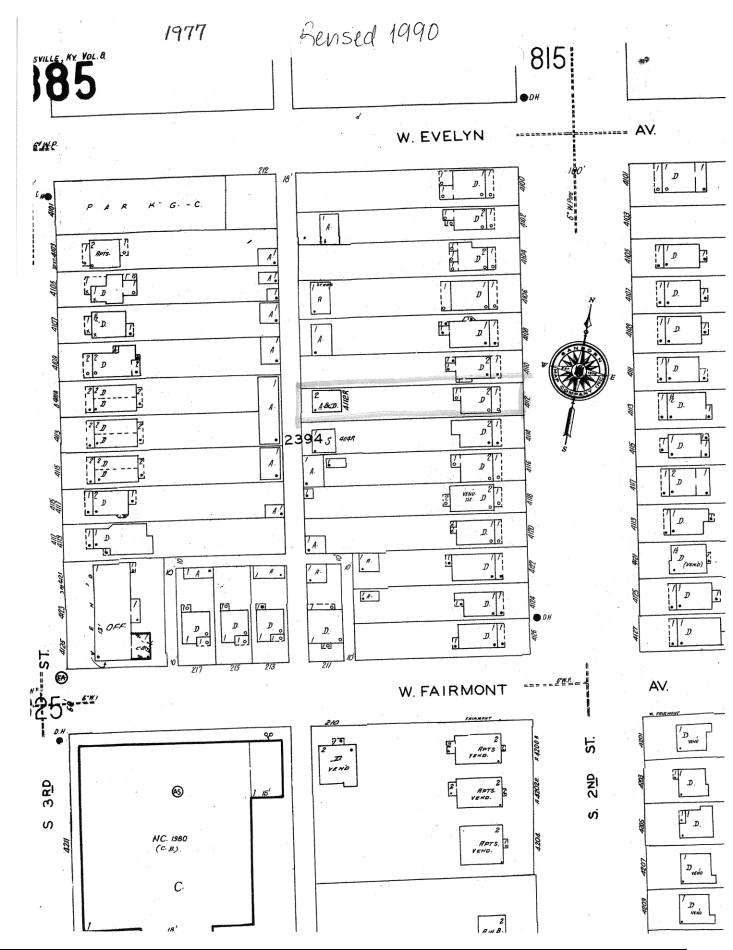
makes it nonconforming:

Rear house is on same location when built in 1922 (1920-1940) Vinyl siding added in 2004, window replacements in 2005 + 2007 by Window World & McCanless Construction. See Attached Pictures Attemped to Contact neighbors for time prior to 1995 # following other suggestions by Attorneys for research.

Nonconforming Rights Application - Planning & Design Services

11 nn Page 1 of 3

UED



328 East Esplanade Avenue Louisville, KY 40214

January 27, 2014

To Whom It May Concern:

My knowledge of 4112 South Second Street began in 1962. I began to work for the L&N RR and I met an engineer named O. E. Alexander and he owned this house at the time. He invited me over and gave me a tour of his house and property, and that time, the carriage house in the back was rented. From that point forward I knew it to be rented.

The Alexander Family died out and Earline Cooper bought it in1990, who also rented the carriage house every year until 1995. I was living at the property next door (4114 South Second Street) to George's house before he bought his property. George Meyers purchased the house and rented the carriage house also for the past nineteen (19) years.

I, John Ohnimus, still own the property at 4114 South Second Street.

1 Copy

Property Location: 4112 South 2<sup>nd</sup> Street – Rear House Current Lessee: Gloria Perkins & Cortez McGinnis (son of Gloria) Case Number:13PM3522-1153769

Ms. April Robbins and Dept. of Codes & Regulations Committee,

I received the "Non-permitted Use-residential" Notice in the US mail on December 7, 2013 (dated December 4, 2013) concerning the above property location. I had previously served a Court Order on November 21, 2013 to above Lessee Perkins to vacate property for non-payment of rent. Lessee Perkins agreed in court on December 18 to vacate premises by January 1, 2014.

I personally talked to lessee on December 26 about urgency to move vehicles and belongings from premises. I also picked up empty cans, bottles and other debris from front and rear yards on December 27 and 28 and set out for trash pickup.

I have talked to several attorneys, some not available with work loads during Christmas holidays of which Scott Jones and an associate of Bardenwerper, Talbott & Roberts, Bissell Roberts have given advice for researching records, etc.

**Enclosed:** Two copies of Nonconforming Rights Application, Realtors Purchasing Contract, Mortgage Contract, Rental Records 1995-2014, Plot Plan, Upkeep and Replacement Financial Records and

#### 2 Photos of:

- 1. House with original 1920's siding
- 2. House with vinyl siding added in 2005
- 3. Original oak floors
- 4. Original kitchen cabinets
- 5. Kitchen cabinet replacements in 1995

I have also knocked on doors to talk to neighbors.

I will gladly meet with committee and continue to present pertinent information as is forthcoming for this **appeal**. Please consider an **extension** of time to provide more information as I have a medical condition.

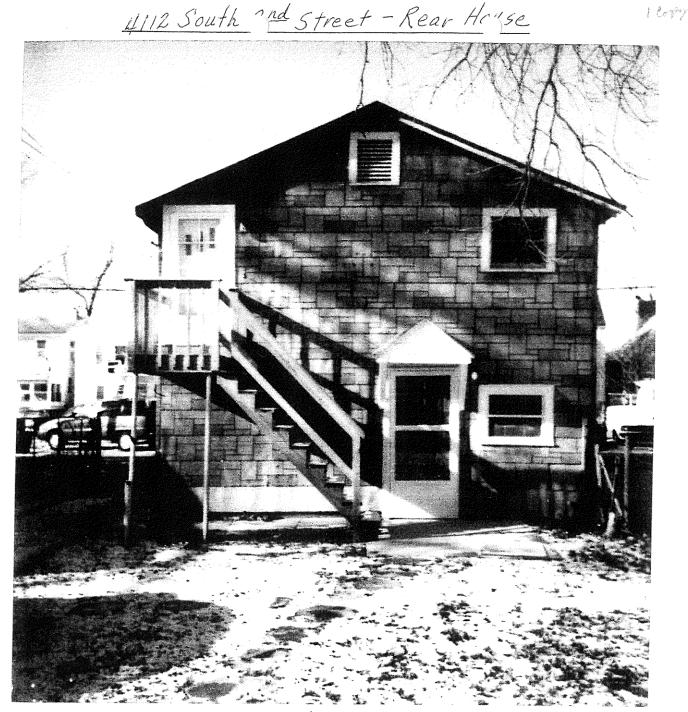
Thank you.

Heorge Meyers

George Meyers, owner

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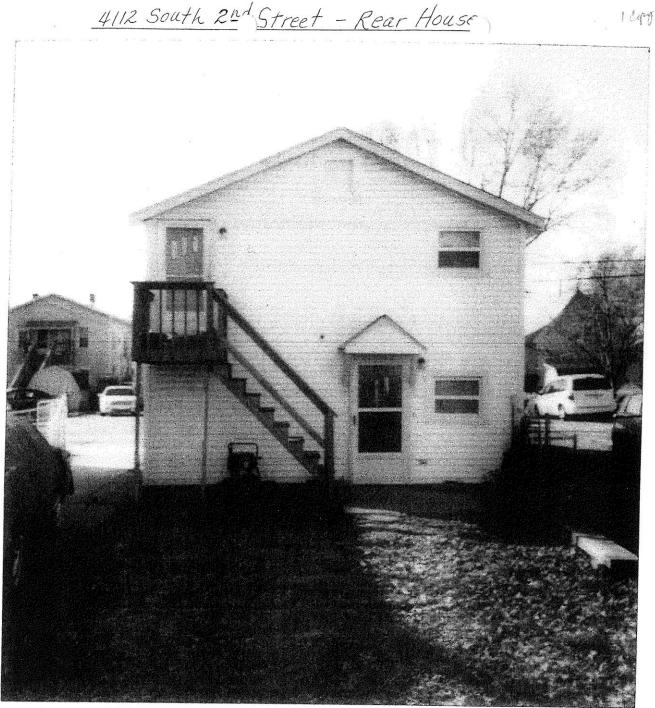




2-Story House Built (Orginal) in 1922. Sides (All Around) covered with <u>Asphalt Roll</u> of: Brown & Tan <u>Simulated Stone</u> nailed to Exterior Walls, popular in 1920's to 1940's, unavailable in 1960's (Original Cover) EIVED IM 022011 <u>Picture Taken in 2001</u>

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ILLAPPEAL 1000



<u>Original 2-Story House, Built</u> 1922. <u>Vinyl Siding installed</u> in: 2005 <u>New Window Replacements</u> in 2005 \$ 2007 JAN 022014 PLANNING & DESIGN SERVICES

Picture Taken: 2013

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Case: 14 Appeal 1000

4112 South 2nd Street - Rear House 1Copor <u>Original</u> <u>Kitchen Cabinets</u> (1922-1995) r r r r r Picture Taken: 1995 <u>Replacement</u> <u>Kitchen Cabinets</u> (Installed: 1995) RECEIVED JAN 112 2011 PLANNING & DESIGN SERVICES Picture Taken: 2006

Case: 14 Appeal 1000

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4112 South 2nd Street - Rear House 10 Ricture Taken: 2006 - Original Oak Floor (1922-2014) NOTE: Floor Sanded, Stained & Revarnished in 1995. RECEIVED (1"×6" Tongue & Groove Joints) JAN 022014 PLANNING & DESIGN SERVICES

Case: 14 Appeal 1000

ILLAPPEAL LOOD

George Meyers

	4112 S. 2 <sup>nd</sup> Street – <u>Rear Ho</u>	ouse (Rents Received)	
	Rents Received	Rents Received	
	Front House	Rear House	
2013	\$ 10,090.00	\$ 3,020.00	
2012	10,500.00	3,300.00	
2011	10,450.00	2,990.00	
2010	10,480.00	4,250.00	
2009	10,250.00	4,850.00	
2008	2,560.00	1,030.00	
2007	4,880.00	2,530.00	
2006	4,460.00	2,550.00	
2005	4,160.00	2,390.00	
2004	8,300.00	5,050.00	
2003	6,830.00	4,840.00	
2002	7,070.00	2,130.00	
2001	7,930.00	4,180.00	NE
2000	7,110.00	4,240.00	CF1 2014 8 55
1999	7,550.00	4,590.00	RECEIVED FEB 11 2014 PLANNING & CES DESIGN SERVICES
1998	4,400.00	3,680.00	PLICHS
1997	3,800.00	4,020.00	OES
1996	5,200.00	2,730.00	
1995	2,150.00	1,080.00	
		(\$606 cold check	<b>(</b> )
		(prorated 11mos	.9days)
	,		

TOTALS \$12	28,170.00	\$63,450.00
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Average taxes/yr. paid on rent of \$6,750	\$3,350
Taxes paid on improvements & top rent/yr. \$10,500	\$5,050



George Meyers

# 4112 S. 2<sup>nd</sup> Street – Rear House

Estimate of Maintenance & Upkeep/Repairs (legal fees, painting, court costs, office, cleaning, carpet replacement, plumbing, electrical, mowing, etc.)

2014	\$ 900.00 Costs	110 hot	irs worked	(owner)
2013	1,080.00	190 "	"	"
2012	450.00	170 "	"	"
2011	310.00	120 "	"	"
2010	430.00	105 "	"	"
2009	420.00	165 "	"	"
2008	1,100.00	195 "	"	"
2007	1,470.00	210 "	"	"
2006	1,240.00	170 "	"	"
2005	420.00	120 "	"	"
2004	240.00	110 "	"	"
2003	190.00	105 "	"	"
2002	1,320.00	250 "	"	"
2001	540.00	120 "	"	"
2000	720.00	95 "	"	"
1999	360.00	115 "	"	"
1998	870.00	120 "	"	"
1997	960.00	190 "	"	"
1996	1,430.00	245 "	"	"
1995	1,820.00	420 "	"	"
TOTAT	¢1( 070 00			

TOTAL \$16,270.00

# <u>UP-KEEP & FINANCIAL RECORDS</u> 4112 SOUTH 2<sup>ND</sup> STREET – REAR HOUSE

1. Sand, Stain & Varnish Stairs & Oak Floor	\$850.00	1995
2. Replace Kitchen Cabinets	\$1,500.00	1995
3. Replace Plumbing Fixtures	\$1,200.00	1995
4. Replace Electric Receptacles	\$730.00	1995
5. Prime & Paint Interior Walls	\$900.00	1995
6. Install Wall Insulation	\$1,250.00	1995
7. Replace Exterior Stairs & Deck	\$1,900.00	1995
8. Repair Roof	\$350.00	1997
9. Install Ceiling Insulation	\$700.00	2000
10. Concrete Gravel Driveway	\$1,800.00	2000
11. Replace Gas Furnace	\$1,400.00	2001
12. Replace Fuses with Circuit Breakers	\$1,100.00	2002
13. Earth Fill, Walk & Landscape	\$800.00	2003
14. Replace Water Heater	\$460.00	2004
15. Install Vinyl Siding	\$5,100.00	2005
16. Replace Front Windows	\$500.00	2005
17. Replace Side & Rear Windows	\$900.00	2007
18. Replace Roof	\$1,700.00	2008
19. Replace Chain Link Fence	<u>\$600.00</u>	2010

#### **TOTAL EXPENDITURE:**

George Meyers

George Meyers Account

JAN P27914 PLANNING & DESIGN SERVICES

RECEIVED

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195

\$23,740.00

KENTUCKY FARM BUREAU INSURANCE COMPANIES

P.O. BOX 20800, LOUISVILLE, KY 40250-(



KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY

12/15/95

DWELLING PROPERTY POLICY DECLARATION

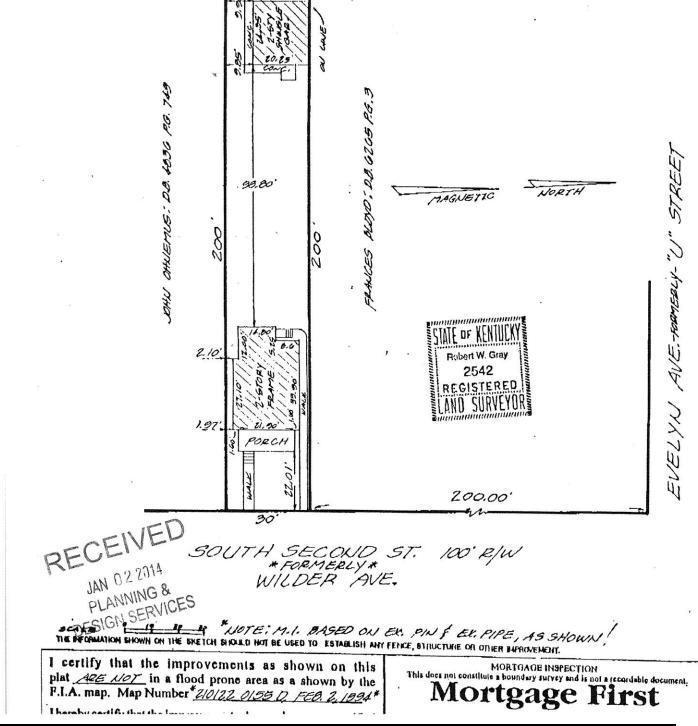
THIS AMENDED DECLARATION IS EFFECTIVE 12/11/95 AT 1201 A.M. STANDARD TIME AND ALONG WITH THE FORMS AND ENDORSEMENTS IDENTIFIED BELOW, CONSTITUTE THE ENTIRE CONTRACT. THIS FORM SUPERSEDES ANY PRIOR SUCH FORMS BEARING THE SAME POLICY NUMBER. THE POLICY IS CONTINUOUS UNTIL CANCELLED OR EXPIRED IN ACCORDANCE WITH THE TERMS OF THE POLICY.

THE TERMS OF T	HE PULICY.					
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· · ·			TOTAL	\$305	5.49	
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2 N	IL					
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Customer Service: Telephone Payments:

Online Customer Self-Service:

Walk-In Center:

a PPL company

1-502-589-1444 (M-F, 7 a.m. to 7 p.m. ET) 1-502-589-1444; press 1-2-3 (24 hours a day; \$1.49 fee) Open Mon-Fri 8 a.m. to 5 p.m. ET www.lge-ku.com (24 hours a day)

DUE DATE	Pay This Amount
02/14/14	\$53.47

Late Dermont Food will be applied to everyout charges if the			ACCOUNT INFORMATION		
Late Payment Fees will be applied to current charges if the current amount due is not received in full by the payment due date on this bill even if payment arrangements have been made. Please have your account number available when calling to			Account Numbe	er: 3000-2753-4381	10.
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Gas/ccf per day		0.0		and the providence of the second second second second second second second	
Jas/cci per day	2.9	0.0	Previous Balance	-	0.00
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			Balance as of 1/2		0.00
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			Total Amount D	ue	53.47
		ELECTRIC	CHARGES		
Rate Type: Residential				Meter Reading Informati	on
Basic Service Charge (\$10.	• •		5.02	Meter # 762009	
Energy Charge (\$0.08076 x			6.22	Verified Reading on 1/21/14	95442
Electric DSM (\$0.00439 x 7	,		0.34	Previous Reading on 1/8/14	95365
Electric Fuel Adjustment (\$0	,		0.01	Current kwh Usage	77
Environmental Surcharge (3 Home Energy Assistance Fi	. ,		0.41	Meter Multiplier	
Total Electric Charges	und Unarge		0.25 \$12.25	Metered kwh Usage	77
Total Electric Glarges			\$12.25		
		GAS CH	ARGES		
Rate Type: Residential Gas Service				Meter Reading Informati	on
Basic Service Charge (\$13.50 x 14/30 Days)			6.30	Meter # 495997	
Gas Distribution Charge (\$0.26419 x 41 ccf)			10.83	Actual Reading on 1/21/14	1571
Gas Supply Component (\$0.51737 x 41 ccf) Weather Normalization Adjustment (\$0.26419 x 2.448 ccf)			21.21	Previous Reading on 1/8/14	<u>1530</u>
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lease see reverse side for a	dditional charges.				
Customer Service 1-502	2-589-1444	Pl	LEASE RETURN TH	IS PORTION WITH YOUR	PAYMENT
Account Number	Payment Due Date	Pay This Amount	Amount Due After Due Date	Winter Help Donation	Amount Enclosed
3000-2753-4381	02/14/14	\$53.47	\$55.08		\$
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