

18APPEAL1005

Appeal of a Staff Determination

508 East Oak St.



Board of Zoning Adjustment Public Hearing

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January 7, 2019

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 508 East Oak Street.

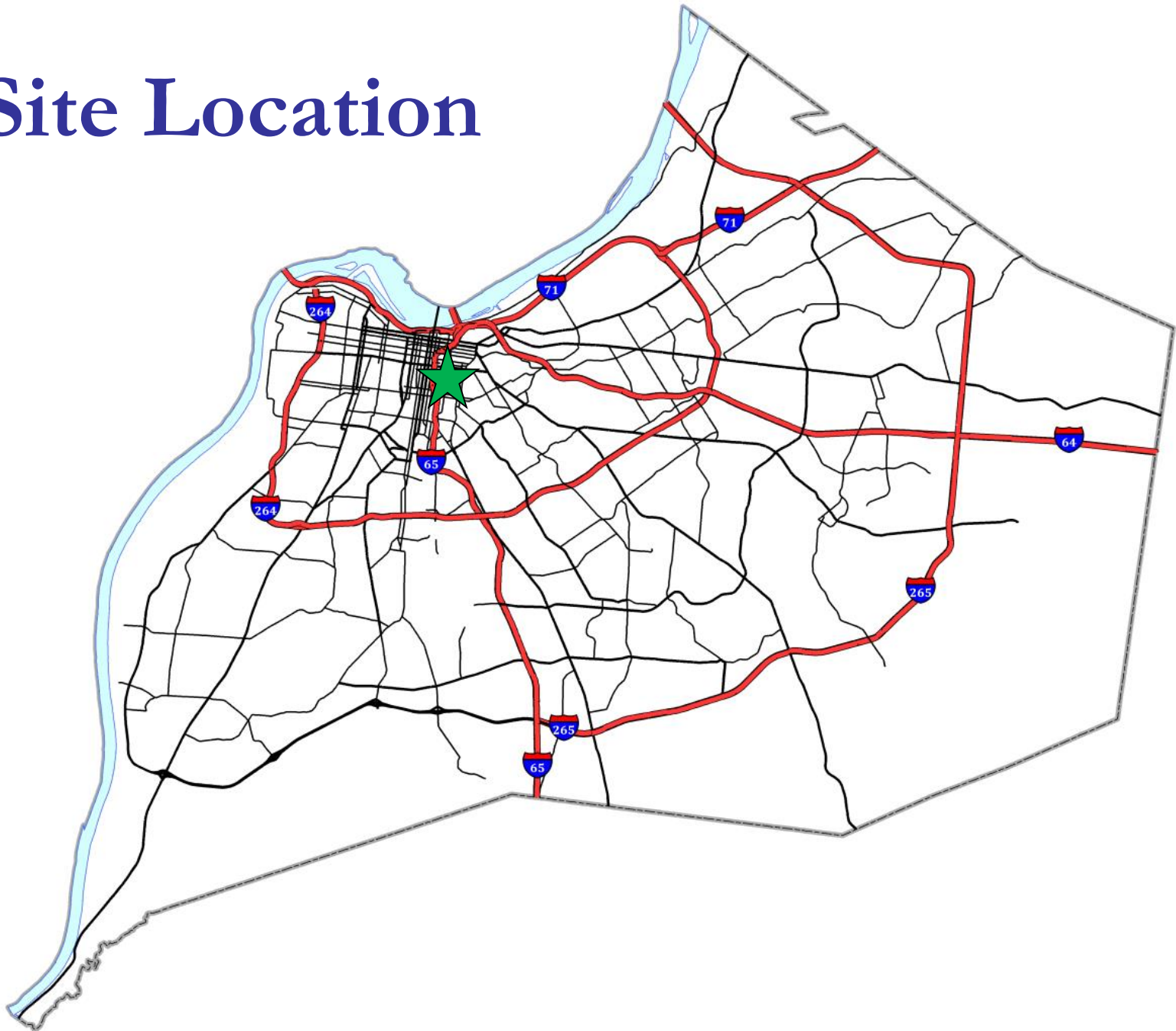
Case Summary/Background

- The property is developed with a single building.
- 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-6 Multi-Family. This zoning classification does permit a duplex; however, the property is not large enough to meet the maximum density of the zoning district.
- 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. In this case, that year is 1985 when the property was rezoned from R-8A to R-6.
- 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.

Site Location



Zoning/Form Districts

Subject Property: R6/TN

North: R6/TN

South: R1/TN

East: R6/TN

West: R6/TN

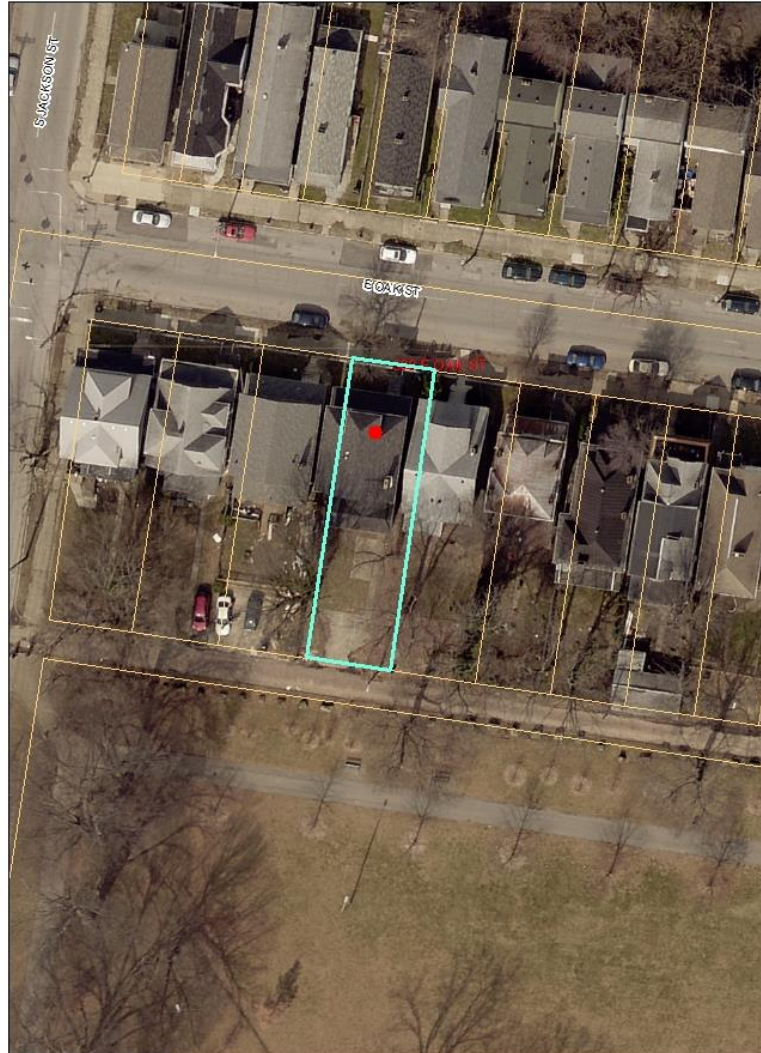


1 inch = 214 feet

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508 E. Oak Street



Aerial Photo/Land Use



1 inch = 46 feet

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12/21/2018 10:18

Front of Subject Property



12/21/2018 10:19

Property to the West



Property to the East

12/21/2018 10:20



12/21/2018 10:22

Properties across the street to the
North



12/21/2018 10:23

Rear of the Subject Property

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 changed in 1985 from R-8A to R-6.
- R-6 zoning does not permit a duplex for a lot this size.
- Per PVA records, the building currently has a “R – Residential 2 Family Dwelling” property class assignment and is described as “Duplex”.
- A nonconforming rights claim must be dated back to 1985 when the zoning was changed.
- According to the applicant the duplex is in an over-under configuration.
- Both units can be access from a foyer in the front of the building.

Conclusions

- In order for staff to approve a nonconforming rights application there must be sufficient evidence in favor of the request and in accordance with the requirements of the LDC. Staff did not find sufficient evidence to grant nonconforming rights for a duplex.
- The Board may take additional evidence including testimony to make it's determination on an appeal of a nonconforming rights determination.

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 in 1985
2. And if so, has it been continuously used as duplex from 1985 to present