

**Board of Zoning Adjustment**  
**Staff Report**  
March 19, 2018



<b>Case No:</b>	18APPEAL1000
<b>Project Name:</b>	1120 W Ashland Ave Nonconforming Use Request
<b>Location:</b>	1120 W. Ashland Ave.
<b>Owner:</b>	Aja Sherman
<b>Applicant:</b>	Aja Sherman
<b>Representative:</b>	n/a
<b>Existing Zoning District:</b>	R-5
<b>Existing Form District:</b>	Traditional Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	21 – Vitalis Lanshima
<b>Case Manager:</b>	Joseph Haberman, Planning & Design Manager

**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 1120 W. Ashland Ave., Louisville, KY.

**CASE SUMMARY/BACKGROUND**

On February 5, 2018, Aja Sherman, the appellant and the current property owner, requested a determination that the existing building at 1120 W. Ashland Ave. is a legally nonconforming duplex. After a review of the application and information within Develop Louisville files, Planning & Design Services staff determined that there was not adequate evidence to support a determination that the duplex is legally nonconforming. This decision was provided to the property owner in a letter on February 19, 2018.

The appellant filed an appeal of the staff determination in a timely manner on February 19, 2018.

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 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 subject property is located on W. Ashland Ave., between Peachtree Ave. and Mapleton Ave., in the Beechmont area. It is currently developed with a single building that appears to have been originally designed as a single-family residence. There are currently two “units” within the building. The first unit is accessible by the front door facing W. Ashland Ave. The second unit is located above the first unit, accessible by a door facing the rear property line.

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. Pursuant to LDC Sec. 2.2.7, this zoning classification does not permit a duplex. 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 includes entries from past city directories, affidavits and other information. This supporting documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<https://louisville.legistar.com>).

### **PREVIOUS CASES ON SITE**

18NONCONFORM1002: This case is subject to this appeal case. On February 5, 2018, Aja Sherman requested a determination that the existing building at 1120 W. Ashland Ave. is a legally nonconforming duplex. Planning & Design Services staff determined that there was not adequate evidence to support a determination that the duplex is legally nonconforming. This decision was provided on February 19, 2018.

15PM10478: There is currently an open code enforcement case concerning the subject property. The violations cited in the case pertain to property maintenance issues. As of the publication date of this report, the property owner has not been cited regarding the duplex use.

### **INTERESTED PARTY COMMENT**

No interested party comments have been received as of the publication date of this report.

### **STAFF ANALYSIS**

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.

Based on a review of archived zoning maps, the zoning was A (One-Family District) from 1958 to 1966 and has been R-5 (Single Family) from 1966-67 to present. Pursuant to LDC Sec. 2.2.7, the R-5 zoning classification does not permit a duplex.

According to Jefferson County PVA records, the building currently has a “510 Res 1 family dwelling” property class assignment and is described as “1: Single family”. Property details indicate that the 1.5 story building was built in 1945, consists of 1,386 square feet of finished area and has two full bathrooms. The number of kitchens and bedrooms is not provided.

According to a Zillow listing ([https://www.zillow.com/homedetails/1120-W-Ashland-Ave-Louisville-KY-40215/73431130\\_zpid/](https://www.zillow.com/homedetails/1120-W-Ashland-Ave-Louisville-KY-40215/73431130_zpid/)), the building is described as “Single Family”. The listing indicates that the building has three bedrooms, two full bathrooms and two kitchens. Staff did not find any direct reference to the building being a duplex. Note: some of this information may have been sourced from the Jefferson County PVA.

Staff did not inspect the interior of the building. Based on a review of narrative descriptions and photographs provided in the Zillow listing, the first unit is situated on first floor and the second unit is situated on the second floor. The first floor unit includes two bedrooms, one full bathroom and a kitchen. The second floor unit includes one bedroom, one full bathroom and a kitchen. Both units appear to have been recently remodeled. The first floor unit is accessible by the front door facing W. Ashland Ave. and the second floor unit is accessible by a door facing the rear property line. As an internal stairway is not shown in the photographs, it is unknown as to whether or not there is an internal connection between the two units. It is also unknown if the units share electric utilities, water utilities, a heating system, and/or an air conditioning system. The photographs only show a single electric meter/panel, a single water heater, a single furnace, and a single air conditioning unit.

In the nonconforming rights application, the appellant asserts that the house has existed since around 1945 and has been listed as a “two dwelling home” by city directory since 1949. City directory entries for the address were submitted for 1946-47, 1949, 1953-54, 1955, 1962, 1963, 1964, 1966, 1967, 1968-69, 1970, 1971, 2003, 2005, and 2017.

While the city directory entries imply that unrelated persons lived at the address, they are not conclusive as to whether or not the occupants lived separately in stand-alone dwelling units or together as roommates in a single housekeeping unit (note: the non-relation is implied by virtue of the listed occupants having different surnames). None of the city directory entries referenced apartment or unit numbers associated with the address, which are commonly provided in other entries. In some of the entries, only a single phone number was provided for the address (1953-54, 1955, 1962, 1966, 1967, 1970, 1971, 2003, 2005) and/or a single occupant was listed (1946-47, 1953-54, 1955, 1962, 2003, 2005). The entries in 1963, 1964, and 1968-69 each showed two occupants with different surnames and independent phone numbers. The entry in 1949 shows two occupants with different surnames, but did not provide phone numbers for any entries.

In the appeal application, the appellant provided the same city directory entries and again asserts that the directories show that the property was rented out to several tenants.

While many of the entries in the directories do not contradict this statement, apartment/unit numbers are not shown and rental status is not indicated to support the statement. Further, several entries list only a single occupant.

In the appeal application, the appellant provides documentation of “comparable properties”, which showed other duplexes, multi-family structures and nonresidential uses in the neighboring area.

While this information may support a conclusion that the area is mixed use in nature, it does not have legal relevance as to determining whether or not the subject building was developed as single-family residence or duplex.

In the appeal application, the appellant submitted an "old listing". Much of the information provided in the listing was consistent with that shown in the Zillow listing. However, the listing includes photographs that appear to show the unit prior to its last renovation and the following statement was provided that was not found on the Zillow listing: "Upstairs is an apartment with a separate entrance with 1 bedroom, kitchen, full bath and another room that could be used as a bedroom!".

The listing was not dated and a notation at the bottom implies the information is from 2018 and attributed the listing to Aja Sherman.

In the appeal application, the appellant submitted handwritten bookkeeping records from a prior property owner that document improvements to the building and what is apparently rental records. Notes document payments from various individuals consistently from 1977 to 1985. In addition, pages that provide date ranges under individual names, but do not provide receipt information, imply that over 50 different persons stayed in the building in 1969-70, 1970, 1970-71, 1971, 1971-72, 1972, 1972-73, 1973, 1973-74, 1974-75, 1975, 1975-76, 1976, 1976-77, 1977, 1977-78, 1978, 1978-79, 1979, 1979-80, 1980-82, 1982, 1982-83, 1983, 1983-84, 1984-87, 1988-89, 1989-90, 1990-91, 1992-97, 1998, 1998-99, and 1999. Most of the tenancies were for only a few months.

In addition, in the appeal application, the appellant submitted affidavits from Shirley Pickerell, Jennie Proctor, Gary Thomas, Linda S. Wise which stated that they are the children of previous property owners - Ernest and Norine Thomas. According to a deed submitted by the appellant, the property was conveyed to Ernest and Norine Thomas in 1969. After Mrs. Thomas passed away in 1983, the title was vested in full to Mr. Thomas, who later passed away in 1987. The affidavits affirm that the "apartment" upstairs was rented continuously while under ownership of their parents.

The aforementioned handwritten records do not state "rent" or expressly state the purpose of the records or that they are associated with the subject property. However, several dated notations state "Moved" and records associated with a new name begin, implying rental payments. Further, while the bookkeeper records alone do not affirmatively indicate whether or not the occupants rented the second floor as an independent unit or acted as roommates, the four affidavits in concert with the bookkeeping records corroborate the appellant's assertion that the second floor was rented out separately from the first floor unit for several years.

In the appeal application, the appellant submitted references from Cornerstone 2020 that support multi-family uses.

Cornerstone 2020 was adopted in 2000 and provides policy guidance for the development of the community. None of its provisions directly relate to the subject property or provide guidance on how to act on an appeal. The LDC and KRS provide such direction.

Pursuant to LDC Sec. 1.3.1.A., 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.

Further, pursuant to LDC Sec. 1.3.1.F., 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.

This property is within the boundaries of the City of Louisville that existed prior to consolidation to Louisville Metro. Within these boundaries, 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. Therefore, in order to recognize the duplex as lawfully nonconforming, evidence must support the nonconforming use as in existence on June 18, 1971. Further, evidence must support that the use was never abandoned and has continued to exist from June 18, 1971 to present.

### **STAFF CONCLUSIONS**

While it does not appear that the building was originally designed as a duplex, some city directory directories, the bookkeeping records and the affidavits provided by the appellant suggest the continued existence of independent renters within the building from 1969 until 1999. In this case, a nonconforming rights claim does not need to date back to their year in which the building was constructed (1945 per the PVA), but 1971. 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. After 1999, there is little evidence in the file that indicates that both dwelling units were continuously occupied by independent housekeeping establishments.

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 an 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 as duplex from June 18, 1971 to present.

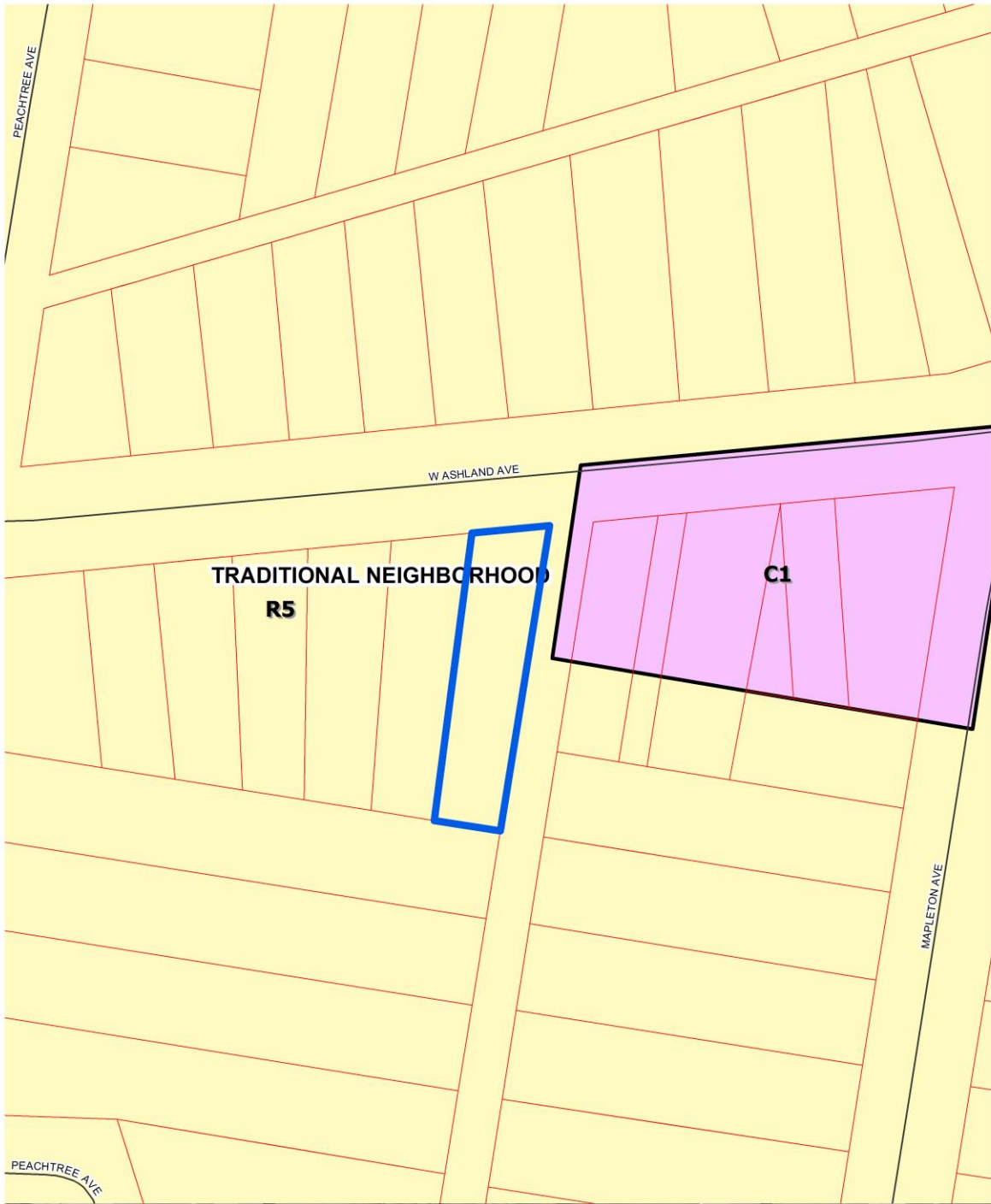
### **NOTIFICATIONS**

Date	Purpose of Notice	Recipients
March 8, 2018	Hearing before BOZA	Appellant, Adjacent Neighbors
March 2, 2018		Sign Posted
March 10, 2018		Legal Ad in Courier-Journal - Circulation Area

### **ATTACHMENTS**

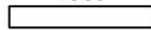
1. Zoning Map
2. Aerial Photograph

1. Zoning Map



1120 W Ashland Avenue

feet



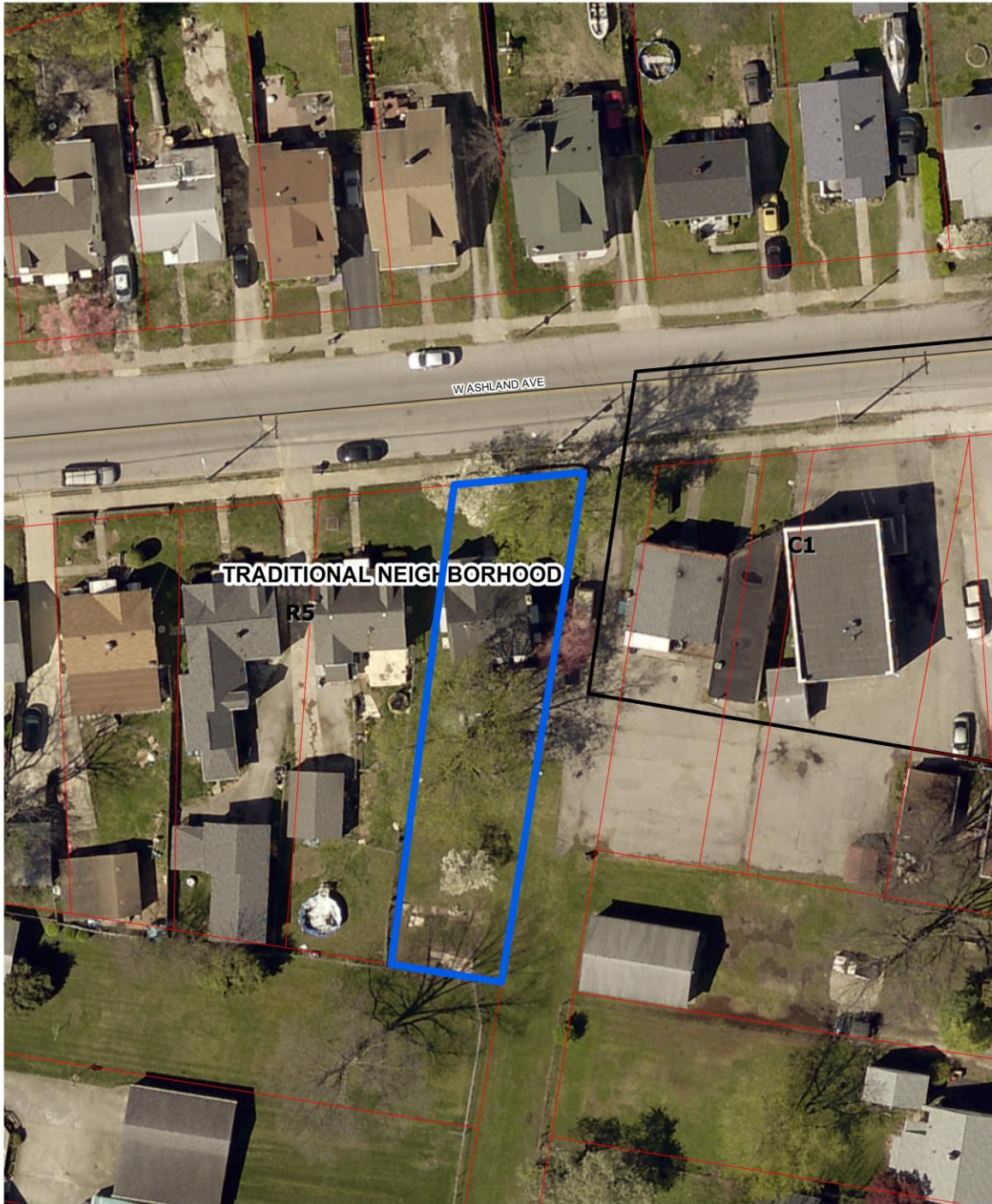
70

Map Created: 3/15/2018



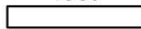
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2. Aerial Photograph



1120 W Ashland Avenue

feet



40

Map Created: 3/15/2018



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