

# Board of Zoning Adjustment

## Staff Report

August 21, 2023



<b>Case No:</b>	23-CUP-0159
<b>Project Name:</b>	Proposed Accessory Dwelling Unit
<b>Location:</b>	6624 Sylvania Road
<b>Owner(s):</b>	Apex Real Estate
<b>Applicant:</b>	Zach Schwager
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	12 – Rick Blackwell
<b>Case Manager:</b>	Molly Clark, Planner II

### **REQUEST(S)**

- **Conditional Use Permit** to allow an Accessory Dwelling Unit (ADU) that does not comply with one or more of the listed standards of Land Development Code (LDC), Section 4.3.27. (LDC 4.2.3)

### **CASE SUMMARY/BACKGROUND**

The applicant is requesting an accessory dwelling unit conditional use permit for a proposed 1 story 500 SF studio ADU and garage. The primary home is a one-story 1000 SF single-family home. The applicant is proposing to convert an existing accessory structure on the site. There are no plans to use the ADU as a short-term rental, which is also prohibited by LDC 4.3.27.CUP is being requested because the owner will not reside on the property (4.3.27.J)

### **STAFF FINDING / RECOMMENDATION**

The proposal is meeting all the standards of the ADU conditional use permit except for item J regarding the owner of the property reside within either the principal or the accessory dwelling unit. The property owner will not be living on the subject site. Relief from item 'J' does not appear justified and does not meet the standard of review.

### **Associated Cases**

22-CUPPA-0239 – the conditional use permit pre-application  
ENF-ZON-22-000712 – zoning enforcement case regarding the operation of an ADU without a CUP.

### **TECHNICAL REVIEW**

Upon approval of the requested CUP, the owner/developer should contact Metro Emergency Services to have address assigned for the proposed accessory apartment.

### **INTERESTED PARTY COMMENTS**

All comments received have been placed in the record and made available to the Board in advance of the public hearing.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT**

1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: The proposal is consistent with the Comprehensive Plan. It provides a variety of housing types including, but not limited to, detached, and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and cohousing. Plan 2040 calls for accessory residential structures and apartments and housing types reflecting the Form District pattern. Plan 2040 also encourage the use of innovative methods such as clustering, mixed use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.

2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: The proposal is compatible with surrounding development and land uses.

3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: The subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed and approved the proposal.

3. Does the proposal comply with the specific standards required to obtain the requested conditional use permit?

LDC 4.3.27 includes the following:

Accessory dwelling units that do not meet the provisions of Section 4.3.27 may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, and U-N districts upon the granting of a conditional use permit and compliance with the listed requirements.

A. One ADU, either attached or detached is permitted per single family dwelling per lot.

B. Maximum ADU Size: 800 square feet or 30 percent of the gross floor area of the principal structure, whichever is greater.

C. Location Requirements:

1. For an attached ADU, the yard or setback requirements of the principal structure shall be met. The attached ADU shall be located either to the side or behind the principal structure.

2. For a detached ADU, the yard or setback requirements of an accessory structure shall be met. The detached ADU shall be located either to the side or behind the principal structure.

D. ADU Access:

1. For an attached ADU, an exterior staircase used to access a second story or higher ADU shall not be located on the front façade of the structure. N/A

2. For a detached ADU, the exterior pedestrian entrance to the ADU shall be located facing the principal structure or side yard.

E. Maximum Height:

1. For an attached ADU, the maximum height shall not exceed the height of the principal structure.

2. For a detached ADU, the maximum height shall not exceed the maximum height permitted for an accessory structure in accordance with Chapter 5 of the LDC. The maximum height shall not exceed the height of the principal structure.

F. ADUs approved under this provision shall not be used as a short term rental.

G. Any property that has been subject to a zoning, property maintenance, or building code violation(s) in the 12 months prior to application shall be reviewed and approved by the directors of Planning & Design Services and Codes & Regulations, or their designees. Any violations shall be resolved prior to approval.

H. Off-street parking shall meet the requirements of Chapter 9 of the LDC.

I. ADUs that include new construction that results in habitable floor area (for example, additions to principal structures or new accessory structures) shall not be allowed on any areas of lots that contain environmental constraints (LDC Section 4.6.2.A)

J. The owner of the property shall reside within either the principal or the accessory dwelling unit.

K. To avoid any confusion, since there is no language to the contrary, this section does not override any deed restriction or homeowners' association declarations restricting accessory dwelling units.

STAFF: The proposal meets most of the standards of the CUP. It does not comply with item 'J' of the standards. The owner will not live on the property. While the owner does not reside on the property, additional units are being provisioned in the appropriate area within the site, which leads to an increase in housing units, but does not necessarily result in affordable housing units. The owner not living on the site restricts the ADU from being leveraged wholly consistent with the intent of the regulations as stated in the Planning Commission staff report "to provide an important option for wealth building." Because the owner does not live on the property, any wealth created leaves the property as it is not associated with an occupant of the subject site. Further, the applicant has provided no justification explaining why relief should be approved.

## **REQUIRED ACTIONS**

**APPROVE** or **DENY** the **CONDITIONAL USE PERMIT** to allow an accessory dwelling unit in the R4 zoning district.

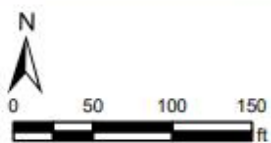
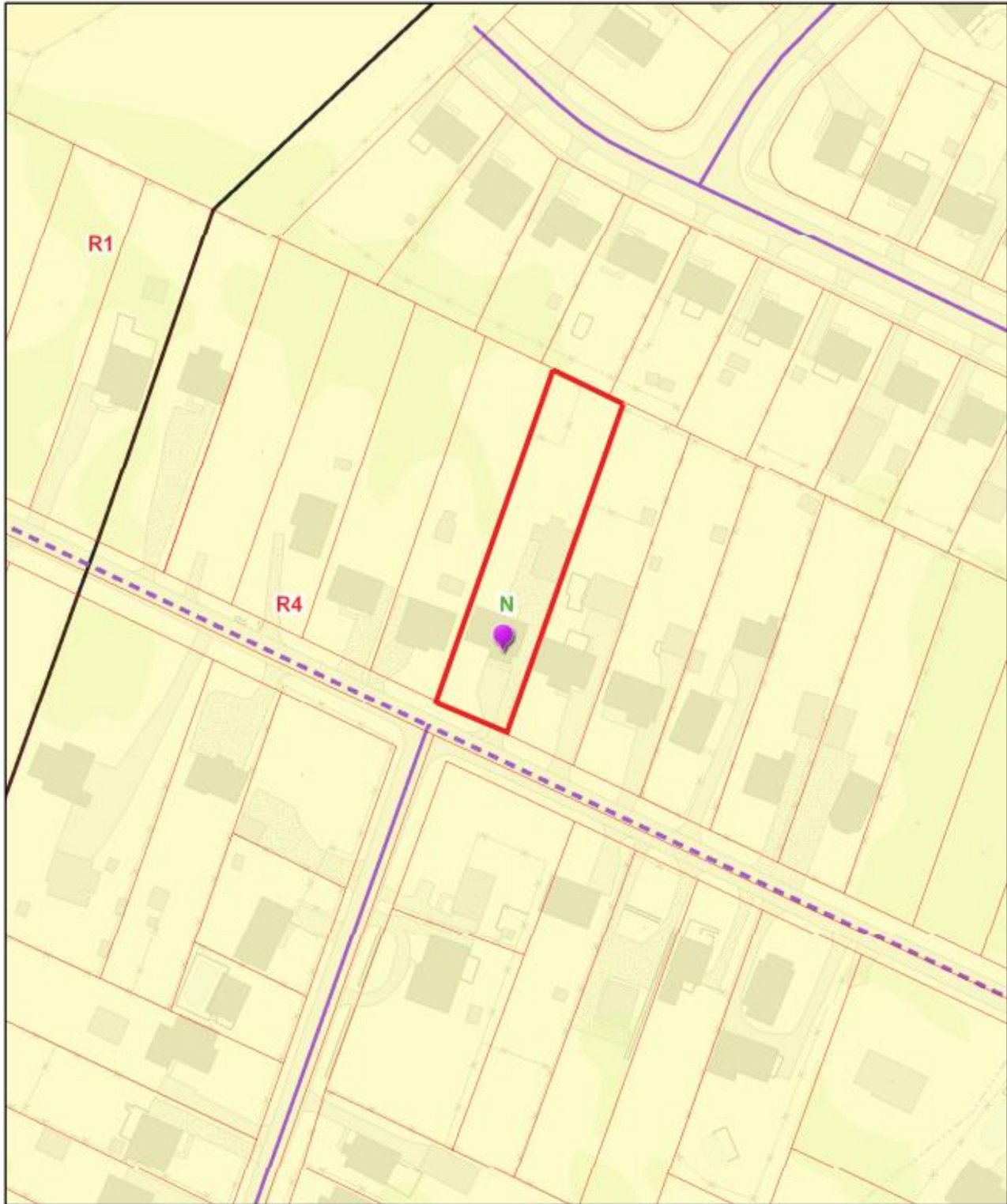
## **NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
7-27-23	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 12
04-26-2023	Neighborhood Meeting	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 12
08-04-23	Hearing before BOZA	Sign Posting

## **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Conditions of Approval

1. Zoning Map



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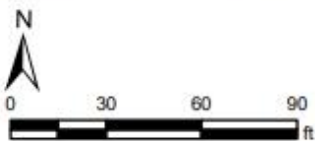


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2. Aerial Photograph



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**5. Proposed Conditions of Approval**

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for an accessory apartment without further review and approval by the Board.